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SUPREME COURT OF THE UNITED STATES.

No. 166.

THE PROPELLER NIAGARA, HER ENGINE, &c., ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, JR., HUGH ALLEN, and FRANKLIN LEE, Claimants and Appellants,

vs.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE DISTRICT OF WISCONSIN.

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UNITED STATES OF AMERICA,
District of Wisconsin, ss.

At a special term of the District Court of the United States of America for the District of Wisconsin, begun and held, according to law, at the city of Milwaukee, on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the Honorable Andrew G. Miller, Judge of said Court, presiding; Stephen V. R. Ableman, Marshal; B. K. Miller, Clerk:

Among other were the following proceedings, to wit:—

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel, and Furniture, ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, Junior, HUGH ALLEN, and FRANKLIN LEE, Respondents.

In Admiralty.

Be it remembered that heretofore, to wit, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, by Messrs. Emmons and Van Dyke, and B. Newhall, their proctors, presented to the Court their libel against the Propeller Niagara, her engine, machinery, boats, tackle, apparel, and furniture, in the words and of the tenor following, to wit:—

(*Libel.*)

In Admiralty.

To the Judge of the District Court of the United States for the District of Wisconsin.

Lester Sexton, of the city of Milwaukee, in said District, Lorin Sexton, George Sexton, and Edward Bolles, all of Hartford, in the State of Connecticut, and copartners under the name and style of Sexton, Brother & Co., exhibit this their libel against the steam-propeller Niagara, whereof Hugh Mallon is or lately was master, her engine and machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein in a cause of contract civil and maritime. And thereupon the said libellants doth allege and articulately propound as follows, to wit:—

First. That the said steam-propeller Niagara is a vessel of twenty tons burthen and upwards, and at the time when the cause of action

hereinafter stated arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the Lakes and navigable waters connecting the said Lakes.

Second. That on or about the twenty-eighth day of November, A. D. 1854, the said vessel, whereof the said Hugh Mallon was master, being then in the port of Buffalo, in the State of New York, and designed on a voyage upon the waters aforesaid, and within the admiralty and maritime jurisdiction of this Honorable Court, to wit, from the said port of Buffalo to the port of Milwaukee in the District aforesaid, the libellants being the owners of certain goods, wares, and merchandise, to wit: Ten bales Russell brown sheetings, fifteen bales Boston brown sheetings, seven bales Hampden sheetings, ten bales Pacific brown sheetings, fifteen bales Atlantic brown sheetings, one bale Marerick brown sheetings, three bales Keystone brown sheetings, twelve bales Jewett city striped shirtings, eight bales Shetucket striped shirtings, one bale Amoskeag striped shirtings, ten bales Jewett city blue denims, ten bales Shetucket blue denims, one bale Amoskeag blue denims, six bales Union blue denims, five bales Omega blue denims, five bales Yantic blue denims, two bales Humbolt tick, three bales Jewett city tick, two bales Amoskeag brown drills, one hundred and twenty-six bales cotton bats, fifteen bales cotton wadding, thirty bundles cotton twine, eight bales bags, one bale of red flannels, one bale yellow flannels, one bale bird's-eye diaper, three bales cotton yarn, one box Greenville bleached shirtings, four boxes blue drills, one box Monroe corset jeans, one box Bates bleached drills, two boxes pins, two boxes Canton flannels, one box satinetts, one box sheep's gray cloth, eight boxes prints, one box prints and spool thread, nine boxes summer pantaloon stuffs, two boxes clothing, one box brown linens, one box table-cloths, napkins, and shawls, one box Kentucky jeans, linen cambric handkerchiefs, and Scotch diaper, three boxes crash, Jacquard diaper, and summer pantaloon stuffs, one box cassimeres cloth, Silesias, and striped shirtings, one box apron check and cassimere, seven pieces of satinett, and four pieces cassimere of great value, to wit, of the value of seventeen thousand dollars, caused all and singular the goods, wares and merchandise aforesaid to be shipped on board said steam-propeller Niagara, the said goods, wares and merchandise, then being all in good order and well conditioned, to be safely carried on board said vessel from the said port of Buffalo to the said port of Milwaukee, and there delivered to the said libellants. And the said Hugh Mallon, master of said vessel, then and there received on board said vessel all and singular the goods, wares and merchandise aforesaid, for the purpose aforesaid, and then and there undertook and faithfully promised the libellants to transport the said goods, wares, and merchandise, from the said port of Buffalo, on board said steam-propeller, to the port of Milwaukee aforesaid, in consideration of certain freight to be paid

in that behalf, and there at the said port of Milwaukee to deliver the said goods, wares and merchandise, for the libellants, in like good order and condition, the dangers of navigation, fire and collisions excepted, and the ordinary bill of lading was executed and delivered to the libellants.

Third. That the said propeller shortly afterwards departed on her said voyage; but the said Hugh Mallon, master as aforesaid, not regarding his duty in that respect, nor his promise and undertaking to carry and deliver the said goods, wares, and merchandise as aforesaid, did not nor would so convey and deliver the same, although no dangers of navigation, fire or collision prevented him from so doing, but on the contrary thereof so negligently and carelessly conducted himself with respect to the said goods, wares, and merchandise, that by and through the mere carelessness, negligence, and improper conduct of the said Hugh Mallon, master, and his mariners and servants, the said goods, wares, and merchandise became wetted, stained, and greatly damaged, by reason whereof the libellants have sustained damage to the amount of twelve thousand dollars, for which they claim reparation in this suit.

Fourth. That the said vessel is now in the District of Wisconsin.

Fifth. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said steam-propeller Niagara, her engine, machinery, boats, tackle, apparel, and furniture, and that this Honorable Court will pronounce for their aforesaid demand, and decree the same to be paid, with costs, and for such other and further relief in the premises as to right and justice may appertain, and as the Court is competent to give.

LESTER SEXTON,
LORIN SEXTON,
GEORGE SEXTON,
EDWARD BOLLS,
by LESTER SEXTON.

EMMONS and VAN DYKE, and B. NEWHALL,
Proctors for Libellants.
N. J. EMMONS, *Advocate.*

District of Wisconsin, ss.

Lester Sexton, of Milwaukee, one of the libellants named in the foregoing libel, being sworn, says that he has read the foregoing libel, and that he verily believes the same to be true.

LESTER SEXTON.

Subscribed and sworn to before me this 14th day of May, A. D. 1855.

B. K. MILLER,
U. S. Commissioner.

And also same day filed their stipulation for the payment of costs, which said stipulation is in the words and figures following, to wit:—

(*Libellants' Stipulation.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

Whereas, a libel was filed in this Court, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, by Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, against the propeller Niagara, her engine and machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue, and the party hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and are bound, in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against by this Court, or in case of appeal, by the Appellate Court.

LESTER SEXTON,
LORIN SEXTON,
GEORGE SEXTON,
EDWARD BOLLES,
by LESTER SEXTON,
R. P. JENNINGS.

Taken and acknowledged this 14th day of May, 1855, before me,
B. K. MILLER,
U. S. Commissioner.

District of Wisconsin, ss.

R. P. Jennings, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

R. P. JENNINGS.

Sworn to this 14th day of May, 1855, before me,
B. K. MILLER,
U. S. Commissioner.

(*Order for Process and Advertisement.*)

Whereupon, on motion it is ordered by the court that a monition issue to the Marshal, returnable on the twenty-eighth day of May

inst. at eleven o'clock in the forenoon, and that this court will on that day and time proceed to the hearing and trial thereof: And it is further ordered that notice be given by advertisement published in the Milwaukee Daily News, a newspaper published in the City of Milwaukee, and by notices put up in the most public places at and near the place of trial for at least ten days.

Whereupon a monition issued as follows:—

(*Monition.*)

District of Wisconsin, ss:

The President of the United States of America, to the Marshal of the District of Wisconsin, greeting:—

Whereas, a libel hath been filed in the District Court of the United States for the District of Wisconsin, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, by Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, against the Propeller Niagara, her engine and machinery, boats, tackle, apparel, and furniture, for the reason and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said propeller or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said propeller or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants: [SEAL.]

You are therefore hereby commanded to attach the said propeller or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the District of Wisconsin, on the twenty-eighth day of May instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegation in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, Judge of the said Court, at Milwaukee, in the District of Wisconsin, this fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, and of our Independence the seventy-ninth.

B. K. MILLER,
Clerk.

EMMONS and VAN DYKE and B. NEWHALL,
Proctors for Libellants.

And afterwards, to wit, on the seventeenth day of May, A. D. 1855, came John J. Tallmadge, as the claimant of the said propeller Niagara, and presented his stipulation, with Joseph W. Haskin, George D. Dousman, and William Sanderson as sureties, that the said claimant shall abide by and pay the money awarded by the final decree rendered by this Court, or in case of appeal by the Appellate Court.

Which said stipulation is as follows:—

(*Claimant's Stipulation.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

In Admiralty.

Whereas, a libel was filed on the fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, by Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, against the propeller Niagara, her engine, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned: And whereas the said propeller Niagara, her engine, machinery, boats, tackle, apparel, and furniture, is in the custody of the Marshal, under the process issued in pursuance of the prayer of said libel, as appears from said monition, now on file in said Court.

Appearing personally, John J. Tallmadge, as the claimant of the said propeller, and produced for sureties Joseph W. Haskin, George D. Dousman, and William Sanderson, and the said John J. Tallmadge, Joseph W. Haskins, George G. Dousman, and William Sanderson, submitting themselves to the jurisdiction of the Court, bound themselves, their heirs, executors, and administrators, in the sum of twenty-four thousand dollars, unto the said Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles that the said John J. Tallmadge shall abide and answer the decree of the said Court in the aforesaid cause; and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

JOHN J. TALLMADGE,
J. W. HASKIN,
WM. SANDERSON,
GEORGE D. DOUSMAN.

Taken and acknowledged, this 17th day of May, 1855, before me,
B. K. MILLER,
U. S. Commissioner.

District of Wisconsin, ss.

Joseph W. Haskin and George D. Dousman, parties to the above stipulation, being duly sworn, deposes and says, that he is worth

the sum of forty-eight thousand dollars over and above all his just debts and liabilities.

J. W. HASKIN,
GEORGE D. DOUSMAN.

Sworn to this 17th day of May, 1855, before me,

B. K. MILLER,
U. S. Commissioner.

District of Wisconsin, ss.

William Sanderson, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of twenty-four thousand dollars over and above all his just debts and liabilities.

WM. SANDERSON.

Sworn to this 17th day of May, 1855, before me,

B. K. MILLER,
U. S. Commissioner.

Whereupon it is ordered by the Court that a warrant of restitution issue to the Marshal to restore the said propeller Niagara, her engine and machinery, boats, tackle, apparel, and furniture, to the said John J. Tallmadge, returnable on the twenty-eighth day of May inst., at eleven o'clock in the forenoon.

Whereupon a warrant of restitution issued, as follows:—

(*Warrant of Restitution.*)

District of Wisconsin, ss.

The President of the United States of America, to the Marshal of the District of Wisconsin, greeting:—

Whereas, a libel has been filed in the District Court of the United States for the District of Wisconsin, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, by Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, against the propeller Niagara, her engine, machinery, boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to the said libellant: And whereas the said propeller Niagara, &c. has been attached by the process of the said Court, in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas also a claim has been interposed and filed in said Court by John J. Tallmadge, and such proceedings have been thereupon had, that by the sentence and decree of said Court in this cause, made and pronounced on the 17th day of May, eighteen hundred and fifty-five, the said propeller Niagara, &c. was adjudged to belong as claimed, and was ordered to be restored to the said claimant. Therefore you, the said Marshal, are hereby commanded to release the said propeller Niagara,

[SEAL.]

her engine, machinery, boats, tackle, apparel, and furniture, from arrest and to deliver and return the same unto the said John J. Tallmadge.

And what you have done in the premises do you make return thereof before the said Court of Admiralty on the 28th day of May inst., at 11 o'clock in the forenoon of said day if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, together with this writ.

Witness, the Honorable Andrew G. Miller, Judge of the District Court of the United States of America for the District of Wisconsin, at the city of Milwaukee, in said district, this seventeenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of these United States the seventy-ninth.

B. K. MILLER,
Clerk.

(*Return to Monition.*)

The said monition was returned with the following indorsement thereon, to wit :—

"In obedience to the within precept I have on this fifteenth day of May, A. D. 1855, attached the propeller Niagara, her engine and machinery, boats, tackle, apparel, and furniture, at Milwaukee, and have given due notice to all persons claiming the same, that this Court will, on the twenty-eighth day of May inst., at eleven o'clock in the forenoon of the same day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and to make their allegation in that behalf; and on this seventeenth day of May, 1855, the said propeller Niagara, her engine and machinery, boats, tackle, apparel, and furniture, were released from custody in obedience to the warrant of restitution hereto annexed.

S. V. R. ABLEMAN,
Marshal.

By C. C. COTTON,
Deputy.

The said warrant of restitution was returned with the following endorsement thereon, to wit :—

(*Return to Warrant of Restitution.*)

"In obedience to the within warrant of restitution I have released the said propeller Niagara, her engine and machinery, boats, tackle,

apparel, and furniture, from arrest, and delivered the same as within commanded.

May 17*th*, 1855. S. V. R. ABLEMAN,
Marshal.

By C. C. COTTON,
Deputy.

And afterwards, to wit, on the twenty-eighth day of May, A. D. 1855, came Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Jr., Hugh Allen, and Franklin Lee, and filed their answer to the libel herein, in the words and of the tenor following, to wit:—

(*Answer.*)

In Admiralty.

To the Honorable Andrew G. Miller, Judge of the United States District Court for the District of Wisconsin:—

The answer of Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Jr., Hugh Allen, and Franklin Lee, owners of the propeller Niagara, her tackle, apparel, and furniture, intervening for their interests therein, to the libel of Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles.

And now comes Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Jr., Hugh Allen, and Franklin Lee, respondents, owners of the propeller Niagara, her tackle, apparel, and furniture, and for answer to the libel of Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, against the said propeller, her tackle, apparel, and furniture, do allege and propound as follows: that is to say—

First. That the said Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Jr., Hugh Allen, and Franklin Lee are the true and *bona fide* owners of the said propeller Niagara, her tackle, apparel, and furniture.

Second. They admit the allegation contained in the first article of said libel.

Third. That as to the matters contained in the second article of said libel, the same are therein in great part untruly pleaded, for the truth and fact is, and they admit and aver that on or about the 28th day of November, 1854, and not on the 24th day of November in that year, as alleged in said second article, Hugh Mallon, captain of said propeller Niagara, then in the port of Buffalo, made a contract with the said libellants to transport certain packages containing groceries or articles of merchandise for said libellants from said port of Buffalo creek to the port of Milwaukee, the dangers of navigation, fire, and collision excepted, which packages were received on board of said propeller and the usual bill of lading given therefor

in accordance with said agreement, and in and by which bill of lading the parties expressly agreed, and it was therein so stated in substance, that the dangers of navigation, fire, and collision, and the risk thereof, was not taken by these respondents, or the said master, or the said propeller, but these respondents are wholly ignorant of the contents of the said packages, and of the kinds, quantities and qualities, and value of the goods, wares, and merchandise therein contained, and they leave the libellants to make such proof thereof as they may be advised is material.

Fourth. As to the third article of said libel these respondents admit that shortly thereafter, and on the 29th day of November, 1854, the said propeller, which they aver was then tight, staunch, seaworthy, and well manned and provided, departed on her said voyage with her entire cargo well, safely, and securely stowed and protected, but upon their information and belief they deny that the said Hugh Mallon did not regard his duty in that respect, or the promise and undertaking to carry and convey said goods and articles of merchandise aforesaid, and they deny that the said captain Hugh Mallon so negligently or carelessly conducted himself, with respect to said goods and articles of merchandise, that they by and through the mere carelessness, negligence, or improper conduct of the said Mallon, or his mariners and servants under him, that they became wetted and damaged, by means whereof they became wholly lost and worthless to the said libellants.

And these respondents deny that the said captain or his mariners were in any respect negligent or disregardful of their duty, as is untruly alleged in said article of said libel, but on the contrary they are informed, and believe, and allege, that the fact was and is, that they were vigilant, competent, and skilful in the premises, and in all respects did what it was their duty to do under the circumstances in which they were placed. These respondents admit that a part of said propeller's cargo was wet and damaged to some extent, but they allege and insist that said damage and injury, and all of the damags and injury to any and all of said cargo was occasioned by dangers of navigation, within the exception of said bill of lading, and for which they are not and ought not in any manner to be held responsible.

And they further allege, and on their information and belief charge and aver that said propeller was by stress of weather compelled to make the harbor of Presque Isle, and by the same and the force of storms compelled to cast anchor there, and by and through the mere force and violence of a storm of snow and gale of wind which was very severe, and a danger of navigation, and not from any want of skill or care on the part of the said captain or any of his crew, the said propeller dragged her anchor and went ashore and was dashed upon the beach and sprung a leak, from which cause alone, and their necessary detention on board of said propeller, being a danger of navigation, whatever injury or damages happened to said goods ac-

crued, and not from a want of care or skill of the said captain or crew. That thereupon and as soon after as it was possible to repair said propeller of the injuries she had received by the storm aforesaid, and for her to proceed on her voyage with said goods, and in the present month of May, 1855, the said goods, wares, and merchandise mentioned in the said libel, or so much thereof as belonged to the said libellant, were transported to Milwaukee, and there delivered to the said libellants and received by them, and they were so received by them with a full knowledge on their part of the damage, if any, and the cause of said damage as herein set forth, and with an agreement on their part not only to share said damage, but that they should be charged with and should pay their proportion of a general average of the losses occasioned by said danger of navigation hereinbefore stated; and these respondents not only claim that the said propeller, and they as her owners, are in no way liable for any of said damages or losses on said goods, wares, and merchandise, but that the libellant is liable and responsible to them for a large amount of the average and damage to their said propeller, which they believe and aver to be two thousand dollars, which they claim of said libellant.

Fifth. As to the allegations contained in the fourth article of said libel, these respondents admit the same to be true.

Sixth. These respondents deny all and every part of the fifth article in said libel, and all the allegations in the whole of said libel not herein in this answer admitted to be true.

Seventh. That all and singular the premises in this answer contained are true.

Therefore, these respondents pray that this honorable court will pronounce against the demand of the libellant in his aforesaid libel mentioned and set forth, with costs.

ANSEL R. COBB,
C. H. CANFIELD,
FRANKLIN LEE.

WM. P. LYNDE, *Proctor.*
S. G. HAVENS, *Advocate.*

UNITED STATES OF AMERICA,
Northern District of New York, ss:

On this 24th day of May, 1855, before me personally appeared Ansel R. Cobb, Cornelius H. Canfield, and Franklin Lee, and they being by me severally sworn, did each depose and say, that he had heard the above answer, by him subscribed, read, and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believed it to be true.

N. K. HALL,
District Judge of the United States for the Northern District of New York.

(*Proofs Filed and admitted by Libellants.*)

And now at this term, this cause being at issue, the following proofs, filed in said cause, were at the hearing read on the part of the libellants.

(*Deposition of George D. Fargo.*)

UNITED STATES OF AMERICA,
District of Michigan, ss.

Be it remembered, that on the second day of June, in the year one thousand eight hundred and fifty-five, I, George G. Bull, a commissioner duly appointed by the Circuit Court of the United States for the District of Michigan, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the acts of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear at my office, in the City of Detroit, in the District of Michigan aforesaid, George D. Fargo, to testify, and the truth to say on the part and behalf of the libellants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the District of Wisconsin, at Milwaukee, in the State of Wisconsin, wherein Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles are libellants, and the propeller Niagara, her engine, boats, tackle, apparel and furniture, and Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Jr., Hugh Allen, and Franklin Lee are respondents: And the said George D. Fargo, being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said George D. Fargo, and he did thereupon depose, testify, and say as follows, viz: That he is a sailor by profession, has been a sailor for about ten years, am at present master of the schooner "Grand Turk." Was at Presque Isle on the second or third day of December, A. D. 1854, when the propeller Niagara went ashore there. It is nearly a land-locked bay. She went ashore on the west side of the bay. I do not know what depth of water she lay in as she was on the beach; never sounded alongside of her while she was there, but should judge from her appearance that she was a little out forward and a little down aft, from the draft she had when loaded. Should think she was about six or eight rods from shore. After she went ashore it was very bad weather for three or four days, cold, and snowing very hard. The bay froze

over so that a man could cross from the pier over to the light-house, and snow fell nearly or quite two feet deep. The morning we left there, Wednesday or Thursday, the wind hauled to the southward and westward, and the ice went out. There is never a very heavy sea in that bay. None but a northeast wind will make any sea in the bay. Does not know how much water the said propeller had in her when the crew left. The crew of the propeller, including the captain, mate, engineer, and all the hands except three, to wit, the watchman, wheelsman, and cook, came away from there on the propeller Plymouth, on the Wednesday or Thursday morning (fifth or sixth of December) after she went ashore.

Question. Did you hear the master or mate of the propeller Niagara say how much water there was in the Niagara?

[This question objected to on the ground of its being hearsay evidence.]

Answer. I did hear them both say she had filled with water. They did not say how much water she had in her, only that she was filled. On the second morning after she went ashore, I heard the mate say that they had been at work with their pumps, and had lowered the water in her about two feet.

Question. Do you know how the water got into the propeller, either from your own knowledge or from what you heard the captain say while there in the charge of the propeller?

[The latter part of this question objected to for reasons above mentioned.]

Answer. I heard the captain say that he came into the bay, and rounded to and let go his anchor; but it did not fetch her up, and she dragged ashore, struck a rock, and stove a hole through her bottom and filled. There was a scow then at the bay, which lay at anchor near the pier, and near where the propeller went ashore.

Question. With the use of this scow, and as the weather was when the master and crew left the propeller, would there have been any difficulty in taking the propeller's cargo out of her, and taking it on shore?

Answer. I should think there would not; they might have taken it out if they had wanted to. There was some box-pumps about half a mile from the bay, that had been used on the Albany. I found them there this spring; was told they were there last fall. Think I told Captain Mallon of the Niagara, while he was at Presque Isle, that those pumps were there. There was a good deal said about taking the cargo out of the propeller. I heard the captain say that the ground tier of her cargo was liquors and molasses, and crockery in crates, and he thought the goods would not take damage, but would be as safe in the propeller as on shore.

[The latter part of this answer objected to by defendant's counsel as being hearsay, and all declarations of captain and mate objected to, and taken subject to objections.]

Heard the captain say that he did not like to foot it down from

Presque Isle; he thought he was a little too heavy. This remark was made in the same conversation above related about taking the cargo out of the propeller. We were talking about unloading the propeller, and if they did so they would have to foot it down or stay there all winter, and the captain remarked, jokingly, I suppose (I think he was joking more than anything else about it), that he would not stay there all winter or foot it down for the vessel and cargo. I think he was joking about it, because I supposed he would do what was right about saving the vessel and cargo.

Question. Do you think you would have gone off and left the vessel and cargo in the situation in which Captain Mallon did?

[Objected to by defendant's counsel as incompetent.]

Answer. I think if I was in a bay as that vessel was, and stranded, I should have used my best endeavors to save vessel and cargo before abandoning it.

From twelve to fifteen men live at Presque Isle; they are white men, laborers, wood-choppers, &c. I think their services might have been obtained, but do not know. There was no lumber there. I do not know how long it would have taken to put up a log shanty; there is plenty of timber and trees there, and men to cut it.

I suppose, though I have never been on the propeller, that a part of her cargo might have been taken from the hold and stowed between decks, and about the engine, and in places where they carry fuel, and in that way been out of the reach of the water.

The conversation between witness and the captain above stated, in relation to taking out the cargo, &c., was started by my asking the captain if he was going to take the cargo out of her. On hearing the captain's statement that there was nothing in her hold as far up as the water would come except liquor, molasses, crockery, &c., I thought the cargo would be as safe on board as on shore; but if the cargo had consisted of a mixed cargo of fruit, fish, dry goods, &c. &c., or anything that would injure by water, my impression then was that it should have been taken out.

The reason why I asked the captain if he was going to unload the propeller was, because I thought if there was any things in her which would take damage by water getting in the hold, they ought to come out of her.

Cross-examination.

The morning we left Presque Isle the weather was pretty cold and freezing, the wind and the undertow had broken up the ice and caused it to go out. There was about two feet of snow on the ground. The scow mentioned in the direct examination belonged to Walbridge, and had been used at the wreck of the Albany. The scow was in first-rate condition. The pumps mentioned in my direct examination were common box-pumps, well made and in good order to go to work with. I have a strong impression, indeed I know that I mentioned the fact of these pumps being there to Captain Mallon.

Direct Examination Resumed.

I was at Presque Isle this spring when the goods were taken out of the propeller. Saw such of her cargo as was taken out at Presque Isle taken out of her. The cargo was not stowed in the manner that the captain had represented to me it was, but was stowed promiscuously clean down to the ceiling. In the middle hatch coffee was stowed clean down to the ceiling; forward was the most heft of molasses, liquors, and heavy freight. A good many of the groceries, such as coffee, lemons, fruit, &c., were entirely ruined; a large lot of coffee was thrown away as worthless. The water that came out of her was as black as ink, and smelt so that it was almost impossible to work on board of the vessel. The water had apparently remained stagnant in her all winter.

Since I have seen the manner in which the cargo was stowed on the propeller, I am of the opinion, and have no doubt but what the goods ought to have been taken out of the propeller last fall when she was stranded.

GEO. D. FARGO.

(*Deposition of John Ramsdell.*)

UNITED STATES OF AMERICA,
District of Michigan, ss.

Be it remembered, that on the fourth day of June, in the year one thousand eight hundred and fifty- , I, George G. Bull, a commissioner, duly appointed by the Circuit Court of the United States for the District of Michigan, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the acts of Congress entitled "An act in addition to an act entitled 'An Act for the more convenient taking of affidavits and bail in causes depending in the Courts of the United States,' passed March 1, 1817," and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call, and cause to be, and personally appear at my office, in the city of Detroit, in the District of Michigan aforesaid, John Ramsdell, to testify and the truth to say on the part and behalf of the libellants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the District of Wisconsin, at Milwaukee, in the State of Wisconsin, wherein Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles are libellants, and The Propeller Niagara, her engine, boats, tackle, apparel, and furniture, and Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Junior, Hugh Allen, and Franklin Lee are respondents: And the said John Ramsdell, being about the age of thirty-three years, and having been by me first cautioned and sworn to testify

the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, I did carefully examine the said John Ramsdell, and he did thereupon depose, testify, and say as follows, viz: Knows the propeller Niagara; am a sailor by profession. Have sailed for the last eighteen years. Am now mate of the Grand Turk. Was mate of the Grand Turk last season. Was at Presque Isle, on Lake Huron, on the night the Niagara went ashore there. She came ashore there on Sunday morning, in the early part of December last, between the first and sixth of that month. I saw her in the morning very early after she went ashore. She lay, I should think, about eight or ten rods from the shore, with her head eastward or southeast, and apparently aground. I think she lay in about eight feet water, a little deeper in the water aft than she was forward. I first went aboard of her on the sixth day of December. The master and crew were not aboard of her. They left that morning. They left the watchman, one of the wheelsmen, and the porter, who acted as cook, on board of her. Do not know whether the master or crew made any effort to pump her out or get out her cargo before they left. It was not very bad weather the day the master and crew left the propeller. The ice had gone out of the bay nearly; there was some floating ice around. It froze up two or three days after that. There was a scow in that bay, about a hundred rods from the propeller. It was in good condition then. We used it to light us off this spring. Should think that scow could have been procured to light off the propeller if it had been desired. Captain Hopkins, who had charge of the scow, offered to let us have it in December, to light us off. On the morning the officers and crew of the Niagara left the propeller, there would have been no difficulty, with the aid of that scow and the crew, together with the assistance from men on shore, in taking the cargo out of the propeller and saving it. There were about sixteen men, including wood-choppers and laborers, who lived on shore at Presque Isle. There was some box-pumps on shore at Presque Isle, about a mile from the propeller—it might have been a little over—that might have been procured for use, if needed. If the master and crew of the propeller Niagara had chosen to remain at Presque Isle all winter, they could have procured plenty of provisions from the propeller Plymouth, which lay there loaded with provisions. The latter vessel did furnish those of the crew of the Niagara who remained with pork and flour. If the mate alone, with the three men who did remain, had remained, they, together with the assistance they could have obtained from shore, could have taken the cargo out of the Niagara. If the master and crew of the Niagara had gone to work energetically, they might, with the assistance to be obtained on shore, have taken out the cargo of the Niagara in five or six days. Her deck load consisted of furniture, cotton bats in bales, sleighs, chairs, casks of crockery, wood, &c., &c., which would not have taken hurt or damage by exposure to dry cold weather. I remained on board of the Niagara from the sixth to the twenty-fifth

of December, 1854. Myself and two of the men aboard made an effort to pump her out one day to get at some coal. This was two or three days after I went aboard. We used one of the vessel's pumps, and but one. We pumped about three-quarters of an hour, and lowered the water in her about an inch. We pumped no longer after that, having found our stove was so constructed that we could not burn coal in it, our object being to get at some coal in the vessel. I do not know how many men it would require to work one of those box-pumps spoken of, but think, from the construction of them, that it would not require more than two. When I left the Niagara, I went to Mr. Barnam's, on shore. I left the vessel because the crew did not want me there; they could drink more whiskey than I could. They were drinking liquor pretty much all the time; chopping wood some of the time; that is, two of them. I guess the porter never drank any liquor. I do not know where they obtained their liquor. I remained there on shore all winter, and was there in the spring when the Niagara was pumped out and got off. Such portion of her cargo as was taken out of her was put aboard of the scow before mentioned, and landed on the pier. I left Presque Isle with the Grand Turk, before the Niagara return there after that portion of her cargo that was so put ashore. If I had had control of the Niagara myself, with the assistance of the men I could have got on shore, I should have tried to get out the cargo, and believe I could have accomplished it.

Cross-examination.

The way I happened to be at Presque Isle was because we went ashore ten miles above there. We did not take out our cargo. We had a thousand barrels of apples aboard that were spoiled. The way I came to go on board the Niagara was because Captains Mallon and Fargo fixed it up that I should go on board and board there during the winter. I do not know anything of the doings of the master and crew of the Niagara before I went on board. He might have made efforts to take out the cargo, but I did not know anything about it. I do not know what was in the hold of the Niagara, or how it was stowed. It is not customary to leave goods on board a vessel so stranded, if they will take damage, if there is any chance to save them; it depends upon the character of the goods. It was apparent when the master and crew left, that the goods would be damaged, for the vessel was as full of water as she could be. Do not know why the master and part of the crew left; heard them say they wanted to get home. Did not hear them say anything about removing the goods. Am not acquainted with propellers, and do not know how they store goods on them, or the mode of unloading them. I mean that I never sailed on board a propeller, and do not know much about the manner they are managed. I never was engaged in getting the cargo out of any stranded vessel, except from the Grand Turk, this spring. The three men were left for vessel-keepers, I suppose. One

would have answered as well as three. It is not usual to have more than one when a vessel is froze in in a harbor. Should not think the Niagara was much battered or stove in when I first saw her, in December. The men on shore were wood-choppers and teamsters. I think they might have been employed to assist in unloading the Niagara, because they assisted the Grand Turk in her distress. The porter never drank any liquor, and could have taken care of the vessel alone.

Direct Examination resumed.

To get from the Grand Turk to the Niagara we had to walk about fifteen miles. There was no road. There was aboard the Grand Turk nothing that could take injury, except apples. The rest of her cargo was railroad iron. We did not take out the apples because we had no place to put them. Presque Isle was the nearest habitation. The shore and beach was rocky and stony. We went ashore on the eighteenth of November, 1854. We stripped our vessel and saved everything that could be saved on her. There was plenty of timber growing about Presque Isle, small timber, not very large. I mean that one man is as good as three to watch a vessel under the circumstances, if the object is merely to prevent theft.

JOHN RAMSDELL.

UNITED STATES OF AMERICA,
District of Michigan, ss.

I George G. Bull, a commissioner, duly appointed by the Circuit Court of the United States for the District of Michigan, under and by virtue of the said several acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is that the witnesses, George D. Fargo and John Ramsdell, live a greater distance than one hundred miles from Milwaukee, in the State of Wisconsin, the place of trial of said cause. I further certify, that on the second and fourth days of June, A. D. 1855, I was attended by Norman Emmons, Esq., the proctor and attorney for the libellants, and Edward C. Walker and Mr. Russell, the counsel and attorneys for the respondents, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined, and cautioned, and sworn to testify the whole truth, and their depositions were by me reduced to writing, in presence of said witnesses and the said attorneys, and after the same was carefully read by me to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing them up and directing them with my own hand to the Court for which the same were taken; and I do further certify, that I am not of counsel nor attorney for either of the parties in depositions and captions named, nor in any way interested in the event of the cause named in said

caption. In testimony whereof, I have hereto set my hand and seal this fourth day of June, in the year one thousand eight hundred and fifty-five.

[SEAL.] GEO. G. BULL,
U. S. Commissioner for the District of Michigan.

UNITED STATES OF AMERICA,
District of Michigan, ss.

I, John Winder, Clerk of the Circuit Court of the United States for the District of Michigan, do hereby certify that George G. Bull, whose name is subscribed to the above annexed depositions, is, and was at the time of signing the same, a United States Commissioner, duly appointed by said Court, and that his acts and doings herein are duly entitled to credit as such commissioner. In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at Detroit in said District this 4th day of June, A. D. 1855.

[SEAL.] JOHN WINDER,
Clerk.

By GEO. G. BULL,
Deputy.

(*Deposition of James D. Courtright.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel, and Furniture, JOHN J. TALLMADGE, Claimant; ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, Junior, HUGH ALLEN, and FRANKLIN LEE, Respondents.

Deposition of a witness taken on the part of the complainants in the above entitled cause, taken before me, Joshua La Due, a Commissioner of this Court, by consent of parties, at my office in the City of Milwaukee, in said District, on this fourth day of June, eighteen hundred and fifty-five, at which time and place before me appeared Mr. Newhall, of counsel for the libellants, Mr. Lynde, of counsel for the respondents, and the witness being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, did testify and depose as follows:—

James D. Courtright being duly sworn, deposes and says: I am a sailor. I have sailed eight seasons. I am now mate on the schooner Perseverance. I was at Presque Isle when the propeller Niagara went ashore. I was then second mate on the schooner Grand Turk.

I was waiting at Presque Isle to be conveyed down. It was about the 28th of November, I think; I am not positive. I did not see the Niagara when she went ashore. It was in the night. It was in the west side of the harbor that the Niagara went ashore. It is a very good harbor, a vessel can lie there any time. I did not visit her while she was there. I was not on shore near her while I was there. There was other vessels in there when the Niagara went ashore. The propeller Plymouth was there. The propellers Republic and Kentucky came in there the morning we left, which I think was 3d of December. The crew of our vessel was all there, consisting of the captain, two mates, five of the crew, and cook. On reflection, witness thinks it was after the first of December, that the propeller Niagara went ashore at Presque Isle. We left the second or third day after she went ashore. I heard conversation between the master of the Niagara and the mate, in reference to the cargo of the Niagara. It was in reference to taking out the cargo of the Niagara. It was in the wagon shop, nearly opposite the Niagara, in a small log shanty that I heard the conversation. Captain Fargo was there, and the crew. I should think fifteen or twenty were there in all. I think the mate said to the captain that they might get the goods out of the Niagara, and get her alongside of the dock. The master of the Niagara replied that it was too late in the season to do anything with her, that he was bound to go home, that he would not stop there for the boat and all that was in her. I did not hear captain Fargo make any offer to him. It was some two days after the Niagara went ashore, that we left on the Plymouth. The captain of the Niagara and crew, except the porter of the Niagara, and another man, and the first mate of the Grand Turk, who were left on the Niagara, went when I went on the Plymouth. At the time the Niagara went ashore the Plymouth was there, and had about twelve deck hands on board. It was very cold weather when the Niagara went ashore, and the day or two we remained there. The day we left, it was quite moderate weather. The morning that we left on the Plymouth, some of the crew of the Niagara walked from the Niagara to the shore on the ice which had made the night before. The people who live at Presque Isle I should judge were wood-choppers. I saw ten or fifteen of them while I was there come in to get provisions at Mr. Barnum's store, perhaps more. Some were wood-choppers and some were teamsters. They had some ox teams and some horse teams. The most of the houses are log houses. Mr. Barnum resides in a frame house. There are plenty of logs there. I think the house near the light-house, is a frame house. There are seven or eight houses there, I should think. I was second mate on the Grand Turk at the time she went ashore at Presque Isle. I should think there might have been forty men raised at Presque Isle, to have been employed about the Niagara. Supposing the Niagara had a full cargo, I should judge that there might have been help enough raised at Presque Isle to have removed the cargo in twenty-four hours. I

could not state whether it would have been possible to have got the propeller Niagara off or not after she was unladen. I should have used a large scow there was there at the time to have got the goods off.

Question. Supposing the Niagara to have had a sufficient anchor, and the anchor to have been thrown out on entering the harbor, state whether the Niagara, in your judgment, would have dragged her anchor ashore at the point where she went ashore?

[Defendant's proctor, or counsel, Mr. Lynde, objected to the question.]

Answer. I think she would have brought up. There is a clay bottom at Presque Isle. I saw one vessel let go her anchor there the same day the Grand Turk went ashore, and she did not drag her anchor, but rode out the storm. The wind at that time blew strong. In the conversation between the mate and the master, I heard the mate say that she no need to have gone into Presque Isle—that they were making bully weather. The course from Presque Isle to the straits west-northwest, and direct.

Cross-examined by Mr. Lynde, Proctor for Defendants.

I could not be positive that it was the second, third, or fourth of December that the Niagara went ashore. I was at Presque Isle when the Niagara went ashore. I staid at Mr. Barnum's house that night. The bay commenced freezing over the next night after the Niagara went ashore, and froze gradually for some two days, when the inside of the bay was nearly frozen over. The propeller Plymouth cut her wheel out of the ice when she left. I should think the snow and ice about where the Plymouth lay was three or four inches thick. The Republic came in just before we left with the Plymouth, and we went out when she came in, and she took our place. The weather moderated, and the wind blew off the land and broke the ice up somewhat the night before the Plymouth left. All the propellers that came in while we were there were loaded (at Presque Isle, I mean). I think there may be seven or eight houses at Presque Isle, barns, out-houses, and all. Mr. Barnum's house is the largest, I think. I should think it is 25 by 35 feet large. I think it is a two-story house. The cargo of the Grand Turk was left in her after she went ashore at Presque Isle. The captain went to Detroit, and tried to get some one to go up and get the cargo, but it was so late in the season he could not get any insurance, and could get no one to go. I mean by saying that there are plenty of logs at Presque Isle, that there is plenty of trees there to be cut. The propellers Republic and Kentucky were bound down. I think the Republic and Kentucky got down as far as Malden. The Plymouth did not get over the flats.

Direct Examination resumed.

I mean by the "inside of the bay" the edge of the bay, the extremity. The Grand Turk went ashore ten miles above Presque Isle. She (the Turk) was loaded with railroad iron and apples. There is one bend in the lake between Presque Isle and the straits, but the course the vessels take shuns that bend. The talk between the captain and the mate was loud and excited talk. There was oaths used by the captain. The captain said, "God damn the propeller," or propelling, I am not positive which; says he, "Give me a vessel yet."

JAS. D. COURTRIGHT.

District of Wisconsin, ss.

I, Joshua La Due, a commissioner duly appointed by the District Court of the United States for the said District, to take affidavits and acknowledgments of bail, and for other purposes, under and by virtue of the several acts of Congress, do hereby certify, that at the time and place named in the caption to the foregoing deposition, the counsel therein named appeared before me by consent, and the witness above named being produced on the part of the complainants therein mentioned, was by me duly sworn, as stated in the said caption, and that thereupon his testimony was by me reduced to writing in his presence, and carefully read over to him, and by him subscribed in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the office of the clerk of said District Court. And I do further certify that I am not of counsel nor a attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

Witness my hand this sixth day of June, eighteen hundred and fifty-five.

JOSHUA LA DUE,
Commissioner, &c.

(*Deposition of Randolph W. Molison.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel, and Furniture, ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, Jr., HUGH ALLEN, and FRANKLIN LEE, Respondents, JOHN J. TALLMADGE, Claimant.

In Admiralty.

Depositions taken on the part of the libellants, by consent of parties, before Winfield Smith, a commissioner of this Court, at his

office in the city of Milwaukee, in the said district, on the second day of June, eighteen hundred and fifty-five, and on the other days named in the said depositions. At which first named time and place appeared Mr. Newhall, of counsel for the libellants, Mr. Lynde, of counsel for the respondents, and the witness, Randolph W. Molison, who being duly sworn says:—

I reside in Presque Isle, Lake Huron. I have been there the greatest part of four years. I was there last fall when the propeller Niagara went ashore. It was in November last year, if I am not mistaken. I took no memorandum of it, for I did not expect ever to have anything to do with it. It might have been about the first of December.

The propeller went ashore a little to the south of the middle of the bay. I first saw her at daylight after she went ashore. She came in just before light. I heard her whistle. She lay about eight rods from shore, with eight feet of water on the inside of her. I went on board of her about the fourth day after she went ashore. After the master of the propeller had gone away, I went aboard four or five times after that. There were about nineteen men living at Presque Isle at that time. Their business is chopping and teaming for Mr. Burnham, who has the dock there. There was a carpenter, blacksmith, and wagon-maker there at work for Mr. Burnham, who are included in the nineteen. There was a light-house keeper there. There were four dwelling-houses there in which people lived, and two in which nobody lived. There were two barns and a vacant cooper's shop. There is also a light-house there, which is over a mile in a straight line, and round the shore two miles from the place where the Niagara lay. The harbor is very round, and the light-house is built on the outer point, on the right hand as you come into the bay. The pier is to the westward of the reef running out on the south side of the bay, opposite the light-house. The entrance of the bay from shore to shore is about half a mile wide. The bay runs in southwest, and is over half a mile deep in the land; the length is over a mile, I should think. They call it so. There is a good anchorage in the bay. I never saw any trouble there. The bottom is clay. Anywhere in twelve feet of water is good anchoring ground. Two-thirds of the harbor is good anchoring ground. I have seen twenty vessels at once there, and then there was plenty of room. The house I live in is about half a mile from the place where the propeller went ashore. Mr. Burnham's house is nearer, and is not quite a half a mile from where the propeller was. His house was nearest to her of the two. Jerry Miner's house is nearest of all to where she lay; that was scant half a mile from the propeller; not half a mile by considerable. The only other occupied house was the light-house. There was also a shanty, occupied by wood-choppers, two miles and a half off. There were no other occupied houses nearer than False Presque Isle, ten miles off. One of the unoccupied houses was close to my house, and the other, the largest, was near Jerry Miner's; it is about 24 by 12. That was

not half a mile from the propeller. One barn, in which the horses are kept, was right by Miner's, about ten rods farther from the propeller than Miner's house. The barn was not very large; it held six horses, and about five thousand bushels of oats; I should judge about 18 by 20 feet. The other barn was about half way between my house and Burnham's, and was rather smaller. In a part of that barn was pressed hay. The barn was only partly occupied by the hay. There was in the harbor, lying at the dock, the propeller Plymouth. Her crew was there, and also the crew of the schooner Grand Turk, which had been wrecked twelve miles from there several days before. There was a large scow there; she was decked over, and would carry four or five hundred bars of railroad iron, from where the Grand Turk lay to the dock in the harbor. She was in first-rate order, and in good weather four men could handle her. She was got up there to get the iron off from the Albany, which had been wrecked near there. I don't know the number of the crew of the Plymouth or of the Niagara. The crew of the Niagara stayed on board of her about a day and a half, and then went aboard of the Plymouth and stayed all night. They went away on the Plymouth on the third morning after the Niagara went ashore. The Grand Turk's crew went at the same time on the Plymouth. Three men of the Niagara's crew were left with the boat. The principal business there is wooding. There is no lumbering there at all. The houses there are made of cedar and small pine logs, and covered with cedar bark. That is used in place of shingles. There were four span of horses there. There were no oxen there. There are wagons and sleighs there. I don't know how deep the water in the propeller was when I went aboard. I heard Mr. Jones, the first mate, say there was about two feet of water. He told me so. The captain of the propeller was there at the time. In the spring, the water in the hold of the vessel, they all said, was even with the water outside. I was not in the hold myself; I have no means of knowing anything about it, except what I heard said. There were at Presque Isle eight or nine pumps, to pump vessels with; they were lying on the beach, near where the Albany went ashore. They were brought up to get the Grand Turk off. They were square; I don't know their size. There is a travelled road, which is a quarter of a mile from the beach where the Niagara was. There had been wagons along the beach there. It was very stormy weather when the Niagara came ashore. The next day was stormy; it blew hard and was cold; it did not snow so much. When the Plymouth left, it was a very fine day. After she left, it was clear, and made ice nights, and did not blow. Before long it blew up a thaw, which continued, so that we did not get any wood until the thirteenth of January. It was about five or six days after the Plymouth left before the thaw came on. After the thaw, there were two or three weeks of very nice weather. The propeller did not change her position on the beach at all. I did not see any effort made by the master and crew to get her off while I was there. I did not see them try to get

off any of her cargo. I was not hired during the winter to get it off, nor was any other person there. No offers were made to me, or anybody else that I know of, to hire us to take off the cargo. The master and crew did not take the scow out to the propeller last fall; they came ashore in the small boat before it froze over. Afterwards, they came ashore on the ice; there were a great many days they could not get ashore on account of the anchor ice. The most of the winter, there was a good passage on the ice from the propeller to the shore. In the spring, the scow was used to light the propeller. It carried the cargo from the propeller to the dock; the propeller was then pulled off by the steamtug Fashion. Before the Plymouth went away, I heard some conversation between Captain Fargo, of the Grand Turk, and the captain of the Niagara, about the cargo. Captain Fargo told the captain of the Niagara, if he wanted any help about getting her off, he would turn in his men and help him. The captain of the Niagara said, "I don't think it will be of any use; we shall be shut in here all winter. Damn the propeller," he said, "it might lay there and be damned, this winter, for all of him; he had done the best he could. I did not hear him say anything about the cargo on her, except as they were joking among themselves; he said it was too bad to have so much spirits go ashore; they had plenty of liquors aboard.

I had a job of cutting wood for Burnham there. I took two men there. I heard no conversation between Burnham and the captain or first mate of the propeller. Burnham was sick at the time.

Question. After the Niagara went ashore, could a log bridge have been made by the men there, with the aid of the lumbermen, between the propeller and the shore; and if so, in what time?

[Objected to by Mr. Lynde, of counsel for the respondents.]

Answer. There could. It would not have taken them over two days, certainly. There was plenty of timber handy. You could have suspended stringers, and built the bridge very handy. The water grew deep very gradually from the shore until you got close to the propeller, where it was eight feet deep in shore. To put up the bridge in two days, I would not want more than twenty men with teams. After the Niagara went ashore there was a time when the scow could have been used there. I don't know exactly the size of the scow. There was about two weeks after the propeller went ashore, when the scow could have been used. The woodmen there could have been hired. Burnham would have let his men go, I suppose. Captain Fargo asked Burnham if he could let him have some help to help him get the schooner off. He told him he could. Then Captain Fargo asked me if I could help him any. I told him I could help him to one or two men. I would have done the same for the captain of the Niagara. I should have liked to get a good job for my men, as it was warm weather. The scow was not brought round to the propeller at all until this spring. I have worked on a scow some.

Question. Supposing the propeller to have had a full cargo, and

two or three feet of water in her hold, could it have been taken from the propeller to the beach on the scow by the men then at Presque Isle; and if so, how, and in what time?

[Objected to by Mr. Lynde, respondent's counsel.]

Answer. I should say in about four days. That would give time enough to get it out of the water. That would not have taken over ten men. They brought all of her deck load ashore at one load of the scow. The two unoccupied houses could have been stored full (as they were vacant), and one barn. The cargo could have been carried up from the beach to the barn and houses by the teams there. I suppose they could have secured the whole of it within a week. We block up the houses there. Six or seven of us go into the woods, and in a day put up and cover a common house. We notch the logs, and put them on top of each other, and cover them with rafters and cedar bark. My house was built with a little more pains. Seven of us built a house in one day that would protect and shed rain. There was plenty of bark there, and plenty of logs. A shanty could have been built there to protect a cargo on shore. It would not have taken over two or three days for the men there to have built a barrack that would protect the cargo of the propeller. I saw the goods taken out in the spring. They took most all out. The cargo was pretty badly off when it came out; it was discolored and dirty. The sugar, water, coffee, and nuts were all soaked together. The dry goods were injured by water and lying in the water. They smelt badly, and were stained, colored dark, and muddy. I saw her pumped in the spring. The water pumped up was dark, nasty water, the soakings of coffee, codfish. There was a very nasty, filthy smell about it, very. The goods, after being put on the pier, appeared to smell pretty badly. There was an offensive smell of dead water about them. They were taken out about the first of May. Coffee came up out of the hold through the pumps. There was plenty of coffee lying there when I came away. Three men staid on the propeller during the winter. Two of them chopped wood part of the winter for Burnham, and the third cooked. He was the porter on the propeller, he said. He called himself also the second cook on the propeller. He was about twenty-two years old.

Cross-examined.

Captain Albert C. Jones, the agent, as I heard him say, after he got here, of the Insurance Company, brought me up here this spring. He did not tell me that he was interested in this suit. He told me the Insurance Company was. I came across him a week ago last Friday, at the dock at Presque Isle. I first saw him, not far from the first of May last, at Presque Isle. When we first started from Presque Isle, he told me that we were going to the Manitou Islands, where he said he had some flour to look after that had been wrecked. He wanted me to help him come on and look after it, as I had nothing else to do. We might get carried on to Milwaukee,

he said. The first I knew what he wanted me here for, was after we got here. He agreed to give me two dollars a day and find me all the time I should be absent from Presque Isle. Before we left Presque Isle, he asked me if I was on board the Niagara during the winter, and if I had seen anything carried away from her. This was the only the conversation I had with him there about the Niagara. He talked with Burnham a good deal about it, and Burnham sent him to me. He wanted then that I should go with him to the Manitous, and may-be we would go on to Milwaukee. I have had no particular conversation with him about the Niagara, except in presence of Mr. Newhall.

The day the Niagara came ashore was a cold day. The ice scummed over during the next night after she came ashore, from where she lay to the pier. I did not measure it to see how thick it was. There is a wood dock at Presque Isle. There is a bridge built out. There are cribs filled with stone in the bay, and the bridge is built out to it. That extends out about two hundred feet into the bay. There was no other dock or wharf there. That was not covered with wood at that time. There were cedar poles on it.

There has been a very large fire in the woods there this spring. When I came away it had not burned down into the settlement at all. I have never sailed at all. I don't know how much that propeller would carry. I don't think she would carry over four hundred tons. I don't think she would carry two hundred tons. She may carry three times that. I think if she had carried a hundred tons, that cargo could have been carried ashore, and secured in a house built for it in a week's time. I think it could, if she had carried two hundred tons. All the houses in the place would have held her cargo. The two vacant houses would not have held her cargo, nor half of it. If I had being going to secure it, I should have built a house for the rest of it. The propeller did not settle any during the winter. I saw her when she was got off. She was no deeper in the water in the spring than in the fall before. I did not see the hole where the water came into the boat. Captain Fargo went down to Detroit after a tug, to get off the schooner Grand Turk. He came back unsuccessful the day before the Niagara went ashore.

Question. What did he report?

[Objected to by libellants' counsel as irrelevant.]

Answer. He said he could not get any tug, as they did not want to risk one out, it was getting too late. He came back without one and took off his men. I recollect the Kentucky and the Republic coming in there, there was no propeller in there afterwards. The Albany went ashore outside of the harbor, south of it, about half a mile from the point of the harbor; that was a year ago last fall. She was a steamboat. Those pumps I spoke of came off of the Albany. They washed ashore and lay piled up there. They were brought up and piled on the dock since the Grand Turk used them. The Grand

Turk used them this spring. The Fashion brought up both crews. I knew last fall that those pumps were lying there. The Grand Turk had, in addition to those pumps and her own, a steam pump brought up by the Fashion to pump out her and the Niagara. These pumps from the Albany were small hand pumps. They would want handles, and the valves would want fixing. From where the propeller lay round the shore to the dock the beach was wide. There is a trodden way where they draw wood which comes down to within a quarter of a mile of the propeller ; the distance from the water to the woods is furthest at that point. The men on board the propeller were off from her one night at a dance. There is no obstacle between that road and the shore where the Niagara lay. The teams could go well on the beach.

Re-examined.

I went on to the pier while the goods were there. I did not notice them much. I did not look at the size of the packages much ; the largest I saw were crates and hogsheads, the others were in smaller packages. After the ice was made the cargo could have been brought ashore over the ice. The easiest way would have been to scow it round to the pier. The vacant houses I have spoken of are one story and one story and a half high. The Burnham House is two stories high, of logs and clapboarded.

Cross-examined.

The bark I have spoke of keeps the houses dry, no water goes through. After the propeller was got afloat this spring, and the canvas was got round her, one pump kept her clear of water half the time ; that is, by pumping half the time.

R. W. MOLISON.

Subscribed and sworn to this fourth day of June, A. D. 1855, before me,

WINFIELD SMITH,
Commissioner.

[For diagram marked A, see original, page 44.]

(*Deposition of Jacob Sharer, Jr.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel, and Furniture, ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, Jr., HUGH ALLEN, and FRANKLIN LEE, Respondents, JOHN J. TALLMADGE, Claimant.

Depositions taken on the part of the libellants by consent of parties before James Sheldon, a Commissioner of the United States Courts, duly appointed, &c. to take depositions at his office, in the City of Buffalo, in the Northern District of New York, the twenty-first day of June, 1855, at which first named time and place appeared Mr. Newhall, of counsel for the libellants, and S. G. Haven, Esq., counsel for the respondents. And the witness, Jacob Sharer, Jr., being duly sworn, says: I am in the employ of A. D. Ellis & Co.; I was last fall, in November, in the employ of Ellis, Petrie & Co., to check goods and do work.

Question. Have you ever seen the paper produced to you marked "A," and if so, when and under what circumstances?

Answer. Yes, sir; it is a bill of lading, a duplicate of a bill of lading; said paper A is hereto annexed. I think this duplicate was sent to Sexton & Bro. & Co., at Milwaukee, the 14th of last December; my signature is appended to a part of the paper at the bottom of the bill. It is at the foot of a note to them informing them of the shipwreck of the Niagara. I got the information contained therein from Messrs. Ellis & Petrie, or one of them.

The counsel for the respondents objects to the paper marked A, as being any evidence in the case or in any way binding on the respondents, and also separately objects to the note at the foot of the same as being any evidence.

JACOB SHARER, JR.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of William Petrie.*)

And the witness, William Petrie, being duly sworn, says: I was a member of the forwarding firm of Ellis, Petrie, & Co., at Buffalo, last fall; we shipped for a large number of parties.

Turk used them this spring. The Fashion brought up both crews. I knew last fall that those pumps were lying there. The Grand Turk had, in addition to those pumps and her own, a steam pump brought up by the Fashion to pump out her and the Niagara. These pumps from the Albany were small hand pumps. They would want handles, and the valves would want fixing. From where the propeller lay round the shore to the dock the beach was wide. There is a trodden way where they draw wood which comes down to within a quarter of a mile of the propeller; the distance from the water to the woods is furthest at that point. The men on board the propeller were off from her one night at a dance. There is no obstacle between that road and the shore where the Niagara lay. The teams could go well on the beach.

Re-examined.

I went on to the pier while the goods were there. I did not notice them much. I did not look at the size of the packages much; the largest I saw were crates and hogsheads, the others were in smaller packages. After the ice was made the cargo could have been brought ashore over the ice. The easiest way would have been to scow it round to the pier. The vacant houses I have spoken of are one story and one story and a half high. The Burnham House is two stories high, of logs and clapboarded.

Cross-examined.

The bark I have spoke of keeps the houses dry, no water goes through. After the propeller was got afloat this spring, and the canvas was got round her, one pump kept her clear of water half the time; that is, by pumping half the time.

R. W. MOLISON.

Subscribed and sworn to this fourth day of June, A. D. 1855, before me,

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[For diagram marked A, see original, page 44.]

(*Deposition of Jacob Sharer, Jr.*)

DISTRICT COURT OF THE UNITED STATES
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LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

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Question. Have you ever seen the paper produced to you marked "A," and if so, when and under what circumstances?

Answer. Yes, sir; it is a bill of lading, a duplicate of a bill of lading; said paper A is hereto annexed. I think this duplicate was sent to Sexton & Bro. & Co., at Milwaukee, the 14th of last December; my signature is appended to a part of the paper at the bottom of the bill. It is at the foot of a note to them informing them of the shipwreck of the Niagara. I got the information contained therein from Messrs. Ellis & Petrie, or one of them.

The counsel for the respondents objects to the paper marked A, as being any evidence in the case or in any way binding on the respondents, and also separately objects to the note at the foot of the same as being any evidence.

JACOB SHARER, JR.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of William Petrie.*)

And the witness, William Petrie, being duly sworn, says: I was a member of the forwarding firm of Ellis, Petrie, & Co., at Buffalo, last fall; we shipped for a large number of parties.

Question. State whether after the shipwreck of the propeller Niagara, last fall, your firm obtained information of the circumstances of the shipwreck from the master or owners of the propeller, or either of them.

Answer. Yes, sir; we had information from the captain and mate, and also from Messrs. Allen and Canfield.

Question. State whether or not you communicated that information to the parties for whom you had as agents or forwarders shipped goods on the Niagara, and among them to the libellants.

Answer. Yes, sir; I ordered Mr. Sharer to copy every bill of lading and send the duplicate to each consignee, with a copy of the protest, together with a statement of what we knew about it. It was either Mr. Sharer or Mr. Howard, they were both in the office.

Question. State what information you got from the master or owners as to the shipwreck.

Answer. I talked with the captain when he returned. He had a very severe gale there, and he was going into Presque Isle, and struck the bottom there somewhere, and had knocked a hole in her, and got from four to five feet of water in the hold. I asked him if they could not get the goods off and put them in a store there, and he said there was no storehouse there that they could get the goods to.

Question. Look at the paper writing produced to you and marked A, and the note appended to it (the same paper is the one referred to by the witness Sharer), and state whether or not you obtained the information stated in that from the master or any of the owners of the propeller, and if so, when and under what circumstances?

[The question is objected to as improper and leading.]

Answer. From the captain at Buffalo, and on the dock near our office. I talked with Mr. Canfield—Mr. Cornelius H. Canfield—after the captain came to Buffalo, about her situation. I got the information in that paper from the captain. I also talked with Mr. Canfield afterwards about it, and he said he understood it the same as the captain told me.

Question. State whether the captain of the propeller and Mr. Canfield, or either of them, stated to you anything about the depth of water in the bow and stern of the propeller, and if so, what?

Answer. Yes, sir; I asked the captain how she laid, and he said she had from 4 to 5 feet of water in the hold forward, and I asked him how it was in the after part of the vessel, and he said he thought it was about five or six inches over the raised floor there where we had put in a good many goods.

Question. Did you name that to any of the owners of the vessel, and if so, to whom?

Answer. I do not think I did, but I may have talked it to Mr. Canfield.

[The counsel for the respondents, before the testimony in answer to the questions were taken, objected to the declarations given of the

captain as binding on the respondents, and also to the declarations of Canfield.]

WM. PETRIE.

Sworn to and subscribed before me June 21, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined, the witness says: I saw the Niagara when the goods were being shipped on her. I cannot say how many anchors she had.

Question. Can you tell anything as to her condition, or whether she was well manned and equipped?

Answer. I do not know anything about the captain or mates, but the vessel, I should think, was in good condition. We had loaded on her all summer, and she always made good trips and good time.

Question. Did the captain tell you at time you mention that he had made the best arrangement for the safety of the cargo that he found it possible to make, or anything like that, and if so, what?

Answer. The captain said that the best thing he could do was to leave the goods on the vessel, that if he put them on shore he would have had to put them right off into the woods, and build a shelter over them, and that he thought they would be better on board of the vessel than they would be on shore, and that the goods would be better off on board the vessel than on shore, and that what was dry would be kept dry there.

Question. Did Mr. Canfield profess to know anything more about the disaster and the condition of things at Presque Isle than what you told him the captain had told you?

Answer. No, sir.

WM. PETRIE.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being re-examined, the witness says:—

Question. At the time the captain made to you the statements named in your cross-examination as to the goods on board of the propeller, did he make to you any statement as to the depth of water in the bow and in the stern of the propeller? and if so, state the same.

Answer. He said there were from four to five feet forward, and

about six inches over the raised floor in the stern. I believe that was the conversation.

Question. State whether or not he gave that either wholly or in part as a reason for not taking the goods out?

[Question objected to.]

Answer. He did not state anything on account of the water, only that there was no place to put the goods and keep them dry, and they would be better on board than on shore.

Question. Did you have any reason for asking, in that conversation, about the depth of water in the bow? and if so, what reason?

[Objected to as immaterial.]

Answer. The reason why I asked him was, I was by all the time the propeller was loading, and we had 70 odd crates to put on board of her, and we put a good many of them in the bottom; they were crates of crockery for Chicago, and I knew a good many of them were on the bottom and the dry goods stowed on top. When we got the bottom filled with Chicago goods, I told the mate he had better put the balance of those crates on the bottom where he was going to put Milwaukee goods, and he filled the bottom of the middle hold of the vessel where he was putting Milwaukee goods. Nearly covered the bottom of the vessel with those crates, and then put the Milwaukee goods on top of them, and my knowing how the goods were stowed was the reason of my making particular inquiries about the water in her.

Question. State how large a portion of the middle hold of the propeller was covered by the crates, and how much, and what part by the goods without the crates, and how far, and to what height from the bottom of the hold the crates reached which were stowed in the bottom of the middle hold.

Answer. When I looked in the hold after they got through putting in the crates, I should judge there was about half of the bottom of the floor of the Milwaukee hold covered with Chicago crates. The crates were laid down flat, and were from two and one-half to three feet high, I should judge. About half of the bottom of the Milwaukee hold was without crates. She took on some goods on board from other houses at Buffalo to my knowledge. Our Milwaukee goods, I think, most of them were stowed in the middle hold. I shipped the goods of the libellants in the middle hold.

WM. PETRIE.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again cross-examined, the witness says: I saw a good many of the goods of the libellants go into the middle hold.

WM. PETRIE.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Due notice of the taking the foregoing testimony is admitted, and regularity in taking the same. Such testimony to be used and admitted at the hearing and other proceedings in the suit in the same way, and with the like effect, as the testimony heretofore taken in this suit.

S. G. HAVEN,
of Counsel for Respondents, Propeller, &c. &c.

WM. P. LYNDE,
Proctor for the same,
per HAVEN.

EMMONS & VANDYKE, and
B. NEWHALL,
Proctors for Libellants.

June 21st, 1855.

(*Exhibit A.*)

Fulton Lake Boat Line.

No. 309. BUFFALO, Nov. 28th, 1854.

Duplicate. Shipped in good order and well conditioned by Ellis, Petrie & Co., as agents and forwarders, for account and at the risk of whom it may concern, on board the pro. Niagara, whereof is master, now in the Port of Buffalo and bound for Milwaukee, the following articles, as here marked and described, to be delivered in like good order and condition, as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below (the dangers of navigation, fire, and collisions excepted), which said captain undertakes to collect, return, and pay.

In witness whereof, the master of said vessel hath affirmed to two bills of lading of this tenor and date, one of which being accomplished the other to stand void.

Sexton,	12 boxes goods	3882					
Brothers	11 cases goods	3745					
& Co.,	36 bales batts	3600					
Milwau-	23 " domestics	5143					
kee, Wis.,	1 large bale (wet)	740					
care Wm.	5 bales goods	425	17535	100	175	35	
Brown	ft. from Hartford & ctg.				16	62	191 97
& Co.	adv. ft. included						
Same	1 bale dom's	256					
	20 bales batts	1000	1256	100			12 56
	adv. included						
Same	11 bales wads	550					
	3 " yarn	795					
	3 boxes goods	1055					
	10 bales dom's	3000					
	12 " "	2580					
	2 boxes pins	557	8537	100	85	37	
	ft. from Hartford & ctg.				6	54	91 91
	adv. included						
Same	1 bale dom's	270					
	2 boxes seeds	720					
	4 bales dom's	951					
	14 " "	3016					
	40 " batts	4000					
	30 " "	3351					
	19 " domestics	4015					
	2 " goods	320					
	7 boxes "	2145					
	4 bales wads	200	18988	90	170	89	
	Bill of chgs. from Hartford				23	51	194 40
	adv. included						
	R. R.						
Same	4 bales dome's	1170					
	R. R. chgs. and ctg.				7	75	
	2 bales dome's	488					
	1 box goods	85	1743	60	10	46	
	R. R. chgs. and ctge.				2	75	
	adv. chgs.				1	30	22 26
	adv. L. ft. included						

Sexton,	21 bales dome's	4975				
Brothers	1 box goods	295				
& Co.	R. R. chgs. and ctge.				24 00	
	adv. do.				10 51	
	5 bales dome's	1500				
	R. R. chgs. and ctge.				9 90	
	6 bales dome's	1800	8570	60	51 42	
	R. R. chgs. and ctge.				12 00	107 83
	adv. L. ft. included					
Same	1 box goods	360				
	R. R. chgs. and ctge.				3 30	
	8 bdls. bags	1280				
	R. R. chgs. and ctge.				8 50	
	5 bales sheeting	1375	3015	60	18 09	
	R. R. chgs. and ctge.				9 10	
	adv. chgs.				1 63	
	do. on bags				1 70	42 32
	adv. ft. included					
	C. Collect N. Y. funds					$663 25

Shippers pay L. ft.

ELLIS, PETRIE & CO.,
W. S. H.

BUFFALO, Dec. 12th, '54.

Messrs. SEXTON BROTHERS & Co.

GENTS: We send you a duplicate B. L. of your goods shipped on pro. Niagara. The capt. of pro. informed us to-day that she had been driven ashore, and sunk at Presque Isle. She had six inches water in bow, and four feet in stern; the bottom of the hold of pro. was covered with crockery and liquors; part of your goods were on deck.

We also send you a copy of protest.

ELLIS, PETRIE & CO.
E. P. & CO., *W. S. H.*,
Per SHARER.

(*Deposition of James Stewart.*)

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

On this 16th day of August, A. D. 1855, before me, Joshua La Due, a Commissioner of the District Court of the United States for

the District of Wisconsin, duly appointed and qualified, personally appeared at my office, in the city of Milwaukee, in said District of Wisconsin, James Stewart, Josiah Sherwood, Leander Waffle, Albert C. Jones, Charles Storm, Caleb Wall, witnesses on the part of the libellants in a certain civil cause of admiralty and maritime jurisdiction now depending and undetermined in the District Court of the United States for the District of Wisconsin, wherein Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles are libellants against The Propeller Niagara, her boats, tackle, apparel, and furniture, and John J. Tallmadge is claimant.

And the said James Stewart, having been by me first cautioned, and sworn to testify the whole truth, did thereupon depose and say: I am a seaman, I profess to be one. I have sailed about thirty-four years. I have been a master since the year 1846. I have sailed on these western lakes since 1837. I am acquainted with the harbor known as Presque Isle on these lakes. I have been into that harbor several times. I consider the anchorage in Presque Isle good, if a person comes to in the right place. The harbor of Presque Isle is nearly land-locked, there is no sea in there. The usual place where vessels come to in Presque Isle, is off or a little north-northwest of the dock. It would depend altogether upon the strength of the wind whether an anchor would hold a steamer or propeller in the harbor of Presque Isle. If the wind was blowing very hard and one anchor would not hold the vessel, I should consider it the duty of the master to let go another anchor, if I had time. It would depend somewhat whether I was just coming in, or had been lying there. I think from the anchorage to where a vessel would take to the ground in Presque Isle when driven, in case the wind was east-northeast, is about two cables' length; a cable's length is seventy-five fathoms, usually. I do not know what other men do, but when I am going into a harbor, with the wind blowing heavy, I have always two anchors ready to let go. I think it is prudent for all masters of vessels to have two anchors ready in such cases.

Question. What do you think about the propriety of a staunch steamer's undertaking to go into the harbor of Presque Isle in the night, with the wind east-northeast?

[Objected to by Messrs. Finch & Lynde, proctors for the claimants.]

Answer. I am not sufficiently well acquainted with the harbor of Presque Isle to attempt to run in there in the night. The course which a steamer would take running from off Presque Isle to Bois Blanc, would be northwest by west, $\frac{1}{2}$ west.

Question. Would it be proper for a seaworthy and staunch vessel or steamer bound up with the wind east-northeast, to attempt to run into the harbor of Presque Isle in the night?

[Objected to by defendants' proctors.]

Answer. I should say it would not be proper; I should run for

the Straits. It is about fifty miles from Presque Isle to the mouth of the Straits. The wind east-northeast would be a fair wind up.

Cross-examined.

I sailed as mate of a propeller one year and a half. I sailed as master one trip when the captain was ashore.

Direct Examination resumed.

The distance from the lights at Bois Blanc to Macinac, is twelve miles.

JAMES STEWART.

(*Deposition of Josiah Sherwood.*)

Capt. Josiah Sherwood, having been by me first cautioned and sworn to testify to the truth, stated as follows: I have been a captain or master of a steamboat and vessel master on the lakes for some years. I was master of a steamboat for the three past years, previous to this year, and have been on at times, or occasionally before. I have been master of a vessel or steamer since the year 1836, and have been on the lakes since 1827. I have been ashore some in the meantime, sometimes three years at a time. I have been into the harbor of Presque Isle several times. The harbor of Presque Isle is considered a good harbor. The entrance to the harbor of Presque Isle is rocky, one side; the other side is a gravelly beach, I believe. It is a good entrance for to go into in the day time. The harbor is of oblong shape, longer than it is wide. Soon after getting inside of the bay, or passed the point, the anchorage commences. It has the appearance of being a good anchorage. I have never anchored there but once. The harbor is well protected from the wind, being nearly land-locked. From the anchorage in Presque Isle to where a vessel would strike the ground, driven by the wind east-northeast, it is about two cables' length.

Question. Suppose a steamer, in entering Presque Isle harbor in the night, with the wind blowing heavy east-northeast, ought she to trust to one anchor?

[Objected to by claimants' proctors.]

Answer. It is customary with steam vessels, as well as sail vessels, to let go one anchor first, and if that will not hold the vessel, to let go the second anchor.

Question. Considering the short distance from the anchorage in Presque Isle to where a vessel would strike the ground, ought not a master to use extraordinary diligence with the wind blowing fiercely east-northeast?

[Objected to by respondents.]

Answer. I consider that it is the duty of every master of a vessel to use all due diligence to take care of his vessel going into port,

and if one anchor will not hold her, I think it is his duty to let go two. It is customary to let go the small anchor first, and have a large one ready, and if the small one will not hold the vessel, then to let go the large one.

Question. Is there any necessity, with proper precaution, of a vessel's going ashore in the harbor of Presque Isle, supposing she was properly prepared with anchors?

[Objected to by respondents.]

Answer. I cannot say, as circumstances alter cases.

Question. Do you consider Presque Isle a dangerous harbor to go into in the night?

Answer. I should not like to trust myself to go in there when blowing a gale of wind in the night. I never did do so. It is very difficult to find any harbor during a snow-storm, and should consider it more dangerous to attempt to go into Presque Isle during a snow-storm.

Question. Supposing a steamer bound up, the wind east-northeast and blowing heavy, and the steamer off Presque Isle, would she not be a great deal better off to keep on her course than to attempt to run into Presque Isle, provided she was in good order?

[Objected to by respondents' proctors.]

Answer. I should think she would be better off to keep on her course to the Straits, provided she was in good order.

Question. Would you not consider it a foolhardy attempt with a steamer, staunch and sea-worthy, bound up, wind blowing heavy east-northeast, to attempt to enter Presque Isle harbor in the night for shelter?

[Objected to by respondents' proctors.]

Answer. I should think it imprudent to do so.

Cross-examined.

I am on the pier with Mr. Higby this season attending to the freight of the Collingwood line.

JOSIAH SHERWOOD.

(*Deposition of Leander Waffle.*)

Adjourned to August 17th, 9 A. M., at which time parties met, and Leander Waffle having been by me duly sworn, and cautioned to testify to the truth and the whole, stated as follows: I am a seaman. I have sailed about fifteen years. I am not sailing now, being engaged in the ship-yard in Milwaukee. I have been a master between seven and eight years. I am acquainted with the harbor of Presque Isle on Lake Huron. There is first-rate anchorage ground in Presque Isle harbor. I have been at anchor there. I should think the pier in the harbor of Presque Isle runs nearly north and south. There is a good achorage right off the pier, about a quarter of a mile from the pier; also a good anchorage out near the lighthouse, which is on

№ 165 pa. 44.

A
DIAGRAM

the opposite side from the pier, on a peninsula. Steamers make the pier in the night. I suppose they keep a light on the pier; they generally do. I think there would be no difficulty in making the pier with a steamer in Presque Isle harbor, after she got into the harbor, with the wind east-northeast, and blowing a gale. From the place where vessels come to an anchor, to the place where they would strike the ground when drifting in a west-southwest direction, in Presque Isle harbor, is thirty or forty rods. There is very little room in Presque Isle harbor to fool around with a vessel. I should judge a propeller ought to round to before letting go her anchor in Presque Isle harbor. It is customary to do so. I do not know how propellers do, as I never went in there with a propeller. The harbor of Presque Isle is considered a very dangerous harbor to enter in the night, with the wind blowing heavy. I should not want to attempt to go in there myself, with the wind blowing heavy, and a heavy sea on.

Question. Suppose a steamer, staunch and seaworthy, bound up the lakes, and the wind blowing heavy east-northeast, and the steamer off Presque Isle, would she not be better off to keep on her course than attempt to run into the harbor of Presque Isle?

[Objected to by respondents' proctors.]

Answer. I should think she would be better off to keep on her course.

L. WAFFLE.

(*Deposition of Albert C. Jones.*)

Albert C. Jones, being by me first cautioned to tell the truth, and duly sworn, testifies as follows, first being sworn on his *voir dire:* I am marine inspector for the Commercial Insurance Company of Milwaukee, Wis. I am paid by the year for my services, a salary; my travelling expenses are paid by the Company, when on business for them. I receive no other compensation for my services. I do not know whether the Commercial Insurance Company of Milwaukee are interested in the result of this suit or not. I think the Commercial Insurance Company of Milwaukee have or had insurance on some of the goods which were on the Niagara, and which are the subject of controversy in this suit. I was sent up to Presque Isle, or rather advised to go up there by some of the directors of the Commercial Insurance Company of Milwaukee, to look up testimony for this suit. I look to the Commercial Ins. Co. of Milwaukee for all the pay I get for going to Presque Isle, in my salary. I receive no extra pay from the Company for going to Presque Isle. There was an understanding when I commenced work for the Company, that when I was not busy as marine inspector, that I should do what the Company set me at. I do not know whether the Commercial Insurance Company have paid up the losses on the goods which came

on the Niagara for Sexton & Co. or not. I have heard some of the Company say they had not paid them.

Cross-examined.

I have received instructions or directions as to what I should do in this matter, from Mr. Sexton, Mr. D. Newhall, Mr. Emmons, and Mr. Hill, and Mr. Kellogg: all the parties named as those who have given me directions, except Mr. Emmons, are Directors of the Commercial Ins. Co. of Milwaukee. I am not interested in the result of this suit.

Same witness, Albert C. Jones, being sworn in chief to testify to the truth, testified as follows: I was educated in a ship-yard. I have been on three different propellers on these lakes for five years. I was clerk while on these propellers generally, although I acted sometimes as mate and sometimes as wheelsman. I was at Presque Isle this spring, the same day, and very soon after the propeller Niagara left there for the first time after she got off the beach, where she lay during the winter. I saw some of her cargo on the pier or dock at Presque Isle. I should think from one-third to one-half of her cargo was there. The condition of what I saw was bad. I saw some of the goods of the libellants in this case there at Presque Isle. Some of the goods I saw there at Presque Isle were very badly stained with a black substance resembling ink, and others that had not been wet at all, but were impregnated with a bad odor, which I suppose they received from the other goods, which rendered them very odious, and almost intolerable to be with. Some of the goods were in a putrid state that I saw at Presque Isle. The goods that I saw at Presque Isle, being part of the cargo of the Niagara, consisted of merhandise of all kinds, some groceries and some wooden ware. There was some fish, some fruit, raisins, &c. I saw where the Niagara had been ashore during the winter at Presque Isle. I was at Presque Isle three days, the first time I went down, I think. The second time I went to Presque Isle, I remained there about a week.

Question. Would there have been any difficulty in taking the cargo out of the Niagara at Presque Isle last fall?

[Objected to by respondents' proctors.]

I should say there would have been no difficulty at all in taking the cargo out of the Niagara last fall at Presque Isle. When I was at Presque Isle, the first time this spring, there were about fifteen men there who belonged there; some who had been there during the winter had gone away on the first boat in the spring. I directed my attention, while at Presque Isle this last spring, to the conveniences there were there for storing the cargo of the Niagara. There were buildings there that could have been used for storing her cargo, enough to have held all the goods that it would have been necessary to have taken out of her. If it had been necessary to have constructed a shanty to have stored the goods or cargo of the Niagara

in there at Presque Isle, there was everything there necessary to have constructed it with. I think, with the conveniences and men they had there for building a shanty, that they could have constructed one large enough to have stored the goods or cargo of the Niagara in twelve hours, at the outside.

There was a large quantity of cedar poles there at Presque Isle. They were from seven inches to a foot in diameter. I saw some bark there that was cut for roofing, and piled up alongside of the road, and convenient for hauling out. They had plenty of roofing for a shanty aboard of the propeller Niagara, consisting of bales of heavy sheeting. I know a Mr. Burnham, of Presque Isle, the man who examined before Winfield Smith as a witness in this cause. I had conversation with Mr. Burnham respecting the propeller Niagara, her going ashore, and the possibility there was of having saved her cargo. Mr. Burnham gave me the particulars of the coming in of the Niagara, of what was done when she got in, and told me what they might have done to prevent her going ashore, and what they might have done with the cargo when she got ashore. He took me up in the woods and showed me the bark there was there, and the facilities there were there for building a shanty there, and saying that it was at a time when he, his men, and teams could have helped them as well as not, had they asked him. He said he had cut and got out thirty thousand of those cedar poles for a telegraph company, which company had failed, and that about ten thousand of those poles were then on or near the dock, and that he would have been glad to have sold *to have sold* them to the captain of the Niagara at thirty cents apiece, for building a shanty, and said they would have been proper for building a shanty. Mr. Burnham also stated to me that the cargo of the Niagara could have been easily preserved.

Adjourned to August 18th, 9 A. M.

August 18th. Parties appeared, and adjourned to August 20, '55.

August 20th. Witness Jones continued.

The character of the shore in the harbor of Presque Isle, around where the Niagara was ashore, was sandy beach mixed with cobble-stones. There was no difficulty in getting to the beach where the Niagara layed. Some portion of the beach between where the Niagara lay and the light-house was springy, and rocks which rendered it difficult to get around. There was a road leading to the beach where the Niagara lay, coming from the woods, where they got timber. The buildings which I mentioned above were log buildings, some of which had been used as dwelling-houses, and others as barns. Mr. Burnham pointed out those buildings, which were empty, and which might have been used for storing the goods, and mentioned those wooden buildings referred to, and I went and examined them. I saw the scow and the pumps which might have been used. There was a scow there which the Sault Canal Company left there, which would carry 150 tons; a splendid scow, which the crew of the Grand Turk had used in getting off railroad iron from the Grand Turk, which

was wrecked above. The scow referred to lay in the harbor of Presque Isle. There were nine good pumps there, which were sent up there to use on the Albany the season before. They were in good order; they were a pump which did not easily get out of order. I was here in time when the Niagara arrived here this spring. She had a full cargo of goods aboard; what would be called a valuable cargo of merchandise, such as would come that season of the year. Captain Anderson was here in Milwaukee when she arrived, representing the owners of the propeller Niagara. I saw some of the goods of the libellants, when the Niagara arrived here this last spring. The condition of some of them was very bad, being badly stained, and others were saturated, as testified above. The goods were in a condition that required immediate attention, the quicker the better. I knew Mr. Storrs in his lifetime. Mr. Storrs was engaged for Sexton & Co., the libellants. He had been in the store of the libellants for some time previous as clerk. I was in the office of Emmons & Van Dyke when Captain Anderson was here, and I heard him say that none of the owners of the goods on the Niagara should have their goods until they signed a general average bond. I also heard him say, at other places in the street, and otherwheres, the same thing. What I heard Anderson say in the office of Emmons & Van Dyke, about delivering the goods, was after the Niagara had been libelled by the libellants. It might have been the same day the suit was commenced, or the day after the suit was commenced. When Captain Anderson had this conversation in the office of Emmons & Van Dyke, referred to above, I believe Mr. Van Dyke was present, and Mr. Sexton. I think Mr. LaDue was sitting at his table in their office, also a student was here in their office. I think when Captain Anderson came in, Mr. Emmons was conversing with Mr. Sexton about the effect or propriety of signing the general average bond, and after Captain Anderson came in, he desired that the general average bond be signed; and Mr. Emmons told Mr. Sexton that he could sign the average bond under protest without affecting their rights for damage to the goods for which this suit was commenced; and the average bond or agreement was signed by Mr. Sexton under these circumstances. There was plenty of wood and fuel at Presque Isle. There was a large quantity of it there. This spring there was some six or seven thousand cords of wood at Presque Isle, some of which had been chopped during the past winter. I have seen a propeller of the size of the Niagara unloaded in one day, and loaded in a day. They are generally two days loading a propeller in Buffalo, where they receive their freight from drays, and they can unload, when they arrive in Chicago, in one day. From one to two days are generally employed in loading or unloading a propeller, however, although by employing extra help they can unload a full cargo in fourteen or fifteen hours; they can unload a full cargo in fourteen or fifteen hours of a propeller of the size of the Niagara, by employing from six to eight extra men to work the winches, which are rigged over the hatches of propellers and

vessels, which are used to lift the goods out of the hold of the propeller. They require no other help except what they have on propellers, besides the extra men referred to, to accomplish it in the last named time. I think the Niagara registers between 350 and 360 tons. I should think the room between decks was nearly or quite equal to that in the hold of the propeller Niagara, and in case the propeller was not out at sea or ashore, I think nearly all the goods which it would take to fill the hold could be stowed between the decks. I am acquainted with Captain Mallon. I have known him for eight years. I never knew of his sailing a propeller or a steamer of any kind before the latter part of last season. He has told me he never did. His mate (Mr. Jones) used to run the Niagara in and out of ports for him while he was running her the last of last season. I have seen him do it. I am acquainted with the qualifications of Captain Mallon for a seaman. I think he makes a very good master of a vessel, but not qualified for a master of a propeller.

A. C. JONES.

(*Deposition of Charles Storm.*)

Tuesday, August 21st. Parties met pursuant to adjournment, and Charles Storm, being first cautioned and sworn to tell the truth, testified as follows: I am clerk for libellants in this cause. I have been in their employ during the past season. I know of the libellants having had a quantity of goods on the propeller Niagara the first time she came into Milwaukee this last spring. I refer to the goods which were said to have been detained during the winter at Presque Isle. I can furnish a schedule of those goods. The schedule was produced and made part of this deposition, and herewith returned, marked "A." The prices marked opposite each item of goods in this schedule is the net cost price in the eastern market, and ten per cent. added at the bottom as the gross amount. I have been in the dry goods trade about twelve years. I am acquainted with the value of the character of goods named in the accompanying schedule. The goods mentioned in the accompanying schedule, in a sound condition, were worth the sum set opposite each item, with the ten per cent. added. There were some styles of the goods mentioned in this schedule worth more than the price set opposite, and ten per cent. added, here in Milwaukee last fall. I saw most of those goods marked on the schedule when they arrived here last spring. The outward appearance of the bales were very bad at the time they were received here; some of them were almost entirely worthless for our business, and some were in very good order; these we received in the store. Those that were injured were stained and discolored.

Cross-examined.

I am in libellants' store in the capacity of salesman, and sometimes receiving and examining goods. Sexton & Co. are wholesale

dry goods merchants. I know of the bills of lading received that were shipped on the Niagara, at Buffalo. The bill of lading which I get my information from, or a copy of it, is at the store. I never saw any other than the one at the store. [Examination suspended, and witness goes to the store for bill of lading.] Witness returns, and, on examination, says he is mistaken about its being at the store, as it had been delivered to Mr. Emmons, proctor for libellants. Witness is here shown a bill of lading attached to the deposition of Jacob Sharer, Jr., taken before James Sheldon, U. S. Commissioner in this case, and returned to the District Court of Wisconsin, and says, it is the bill of lading referred to by him above. Witness cannot say that he ever saw any other bill of lading, other than the one attached to said Sharer's deposition.

Question. How do you know that the goods specified in the schedule herewith returned, marked "A," are the same goods mentioned in the bill of lading just referred to?

Answer. I know so far as this, that the goods which were delivered and received at the store were the identical goods that were purchased or checked on the invoice under my own supervision. I know nothing further or more than I have learned from the bill of lading, that the goods specified in the schedule "A" came off the Niagara; I did not see them come off; none of the officers of the Niagara ever told me so. I furnished all the data to young Mr. Whaling, who was then clerk in Sexton's store, from which schedule "A," herewith returned, was made up. I broke some of the packages of goods which were received at the store, which are specified in schedule "A," herewith returned. I helped break open most of the packs received at the store, which are specified in schedule marked "A." All of the goods specified in schedule marked "A," herewith returned, were not received at the store of the libellants. I cannot testify as to the state of the goods that went elsewhere than at the store of the libellants. The goods that came to the store of libellants I examined and know all about. I do not know the number nor the contents of the packages of goods that went elsewhere than at the store of the libellants specified in schedule herewith returned, marked "A." I could not give you the number nor contents of the packages of the goods specified in schedule "A," which were received at the store.

Question. How do you know that the goods specified in schedule "A," are the goods contained in the bill of lading?

Answer. I know that there was correct invoices checked off from the bill of lading of the goods that were received at the store and of those that went to the auction-rooms. I do not know of my own knowledge that the goods which went otherwheres than at the store of libellants, were the goods specified in the bill of lading, other than as I have stated above. I know that the original invoices were used when checking the goods from the bill of lading. I mean by checking the goods from the original invoice aud bill of lading that we use the original invoice when the bales or packs which are speci-

fied in the bill of lading are broken open, which we do when the goods are received. I think I could take schedule "A" and specify some goods which I recollect of examining at the time they were received in libellants' store. Schedule "A" shown to witness, and he recollects seeing or examining some prints therein specified.

(*Deposition of Caleb Wall.*)

Mr. Caleb Wall being by me first cautioned and sworn to tell the truth and the whole truth, states as follows:—

I examined some goods belonging to the libellants which came in on the Niagara some time in May last. I first the goods in the red warehouse of Goodrich & Hunter, in Milwaukee. I was told the goods came from the propeller Niagara. The propeller Niagara was lying at the dock. Witness examines the schedule marked "A," herewith returned, and says—it corresponds with the goods which I examined and the goods I refer to. The goods which I saw were very badly damaged. They were wet and discolored or stained. The goods which I saw smelt pretty bad. I have been a dealer in dry-goods, and am at present to some extent.

Question. What was the extent of the damage to those goods?

[Objected to by respondents' proctors, for the reason that it is not proper to get at the damage to goods in gross.]

Answer. I should think the goods were damaged full sixty per cent., from fifty to sixty per cent. I believe I said so at the time. I saw them, and that is still my opinion. I examined the goods at the time. I am familiar with the value of that character of goods.

Cross-examined.

All that I examined were damaged more or less. They were given to me to sell. I sold them. I sold the class of goods described in the schedule herewith returned marked "A," same names and same descriptions. I have an invoice of all the goods I had for sale. I examined all the goods that were represented to have come from the propeller Niagara to my store. I cannot say that I examined all the goods described in schedule "A," herewith returned. I cannot say but that there may be three times, and perhaps four times more goods marked or described in the schedule than I examined. I cannot tell exactly what goods I had, except I refer to my invoice. I do not know anything about whether the goods I examined came from the Niagara or not, except what I have been told. I was told so by Mr. William Brown's partner (Mr. Olmstead), of the firm of Wm. Brown & Co. I was also told so by Mr. Whaling, the President of the Commercial Insurance Co. My young man made out the list or inventory of the goods which I sold.

Direct Examination resumed.

Question. Have you any doubt that the goods you examined, and about which you have testified, came off the propeller Niagara?

[Objected to by respondent's proctors.]

Answer. I have no doubt in the world, not the least; I was at the warehouse when the propeller Niagara was unloading there. She was then discharging damaged goods there. Mr. Olmstead is Mr. Brown's partner, of the firm of William Brown & Co.

CALEB WALL.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Joshua La Due, a Commissioner of the District Court of the United States for the District of Wisconsin, duly appointed and qualified, do hereby certify that in pursuance of the stipulation of Messrs. Emmons & Van Dyke, proctors for the libellants, and of Messrs. Finch & Lynde, proctors for the claimants, I was attended on the 16th, 17th, 18th, 20th, and 21st days of August, A. D. 1855, by the proctors aforesaid, and by the said witnesses, and each of the witnesses was by me carefully examined, and cautioned and sworn to testify the truth, and the whole truth, and the testimony by them given was by me reduced to writing, and thereafter subscribed by the said witnesses in my presence.

JOSHUA LA DUE,
U. S. Commissioner in and for the District of Wisconsin.

(*Schedule A.*)

Goods on board Pro. Niagara.

10 bales Russell sheeting	8,868	$6\frac{5}{8}$	$587 40
15 " Boston sheeting	13,669	$6\frac{3}{4}$	922 64
6 " Hampden sheeting	4,758	$7\frac{3}{4}$	368 72
10 " Pacific A sheeting	8,211	8	656 88
15 " Atlantic A sheeting	12,449	$8\frac{1}{4}$	1,027 04
3 " Keystone sheeting	1,470	$9\frac{1}{2}$	139 65
1 bale $\frac{4}{4}$ Maverick sheeting	$658\frac{1}{2}$	9	59 26
8 bales Jewitt City A shirting, 27 in., 3×3	6,400	$8\frac{1}{2}$, $2\frac{1}{2}$ off	530 40
4 do. do. 30 in., 3×3	3,200	$9\frac{1}{4}$, $2\frac{1}{2}$ off	288 60
4 bales Shetucket do. 29 in., 3×3	2,400	$9\frac{1}{8}$, $2\frac{1}{2}$ off	201 00
4 do. do. 27 in., 3×3	2,400	$8\frac{1}{2}$, $\frac{1}{8}$ off	213 00
1 bale Amoskeag	620	11, $\frac{1}{2}$ off	80 60
10 bales Jewitt City denims.	7,428	10, $2\frac{1}{2}$ off	724 23
10 " Shetucket denims.	6,000	10, $\frac{1}{2}$ off	588 00
5 " Yantic denims.	3,500	$9\frac{1}{2}$	332 50
5 " Omega denims.	4,781	9	430 29
6 " Union denims.	4,200	$8\frac{3}{4}$	367 50
1 bale Amoskeag denims.	572	13+	65 78
1 case $\frac{7}{8}$ Brooks Mills blea'd sheetings		00	00 00
1 " Greenville sheetings	$1,386\frac{1}{2}$	$7\frac{1}{4}$	100 52
2 bales Jewitt City ticks	$149\frac{3}{4}$	$8\frac{1}{2}$	126 90
1 bale " " 30 in.	$766\frac{1}{2}$	9	68 99
2 bales Humbolt ticks	1,417	$11\frac{1}{2}$	162 96
2 cases Empire blue drills	$1,646\frac{3}{4}$	9	148 21
2 " Boot blue drills	1,450	$9\frac{1}{4}$	134 12
2 " Amoskeag blue drills			00 00
1 case Monroe corset jeans	1,120	$7\frac{7}{8}$	88 20
1 " Bates bleached drills	1,167	$9\frac{1}{4}$	107 95
2 bales Amoskeag B brown drills	1,565	$8\frac{1}{4}$	129 11
3 ps. " "	112	$7\frac{3}{4}$	8 68
40 bales batts	4,000	6	240 00
30 " "	3,201	7	224 07
36 " "	3,600	$7\frac{7}{8}$	283 50
20 half-bales batts	1,000	$9\frac{1}{4}$	92 50
15 bales black wadding	600	22	132 00
30 " cotton twine	$420\frac{10}{16}$	18	75 72
20 ps. $\frac{3}{4}$ apron check	$669\frac{1}{4}$	$10\frac{1}{2}$	70 27
3 bales cotton yarn	750	$15\frac{1}{2}$	116 25
8 " bags	1,200	23	276 00
1 case pins	200	70	140 00
1 "	228	65	148 20
1 bale yellow flannel	$618\frac{1}{4}$	25	154 56
1 " red twilled flannel	$538\frac{3}{4}$	$29\frac{1}{2}$	158 93

1 case Quaker Canton flannel	63¾	9¼	$58 53
1 " Hartford Canton flannel	642½	9¾	62 62
1 " Stone Mill satinetts	520¼	29	150 87
7 ps. black satinetts	184	62½	115 00
1 case sheeps grays	297¼	60	178 35
24 ps. Ebenezer prints	857	16	137 12
12 ps. cheap fancy prints	541½	4	21 66
1 case Globe 2 fancy prints	1,811½	7	126 80
2 cases Madder do. prints	392⅔	7	274 89
1 case American Dk. fancy prints	1,789	9	161 08
1 " blue and white fancy prints	1,725½	8½	146 67
1 " " orange fancy prints	1,642¼	9	147 80
1 case red prints	2,035¼	9½	193 35
5 ps. Briggs prints	192¾	8	15 42
4 ps. fancy cassimers	121½	50	60 75
3 " "	91¾	80	73 40
1 ps. slater black clothes	20¾	2⅖	47 07
15 ps. black Silecias	551¼	8¾	48 28
72 doz. spool thread		42½	30 60
65 ps. bro. bird's-eye diaper	3,185	8¼	262 76
37 ps. crash	433¼	9¾	42 24
5 " Jacquared diaper	173¼	18½	32 05
5 " Scotch diaper		100	5 00
13 doz. S. C. handkerchiefs		75	9 75
20 " "		87½	17 50
15 ps. Starr K jeans	683¾	13½	92 30
12 ps. Grandville jeans	530½	16	84 88
20 ps. German cottonade	842½	18½	155 86
(Y.) A. & A. Lawrence and Co.			
N. 1 case H twills	611	15½	94 71
O. 1 case Caspian twills	599	14	83 86
O. P. 1 case Caspian plaids	581	15½	90 06
S. C. 1 case sac. Caspian cassimers	598	20 less ½	116 61
E. P. 1 case Elmwood plaids	693	20 less ½	135 14
V. 1 case asst. Veronas	616	15	92 40
S. P.			
S. 1 case Sokoko plaids	606	17	103 02
N. C. 1 case Nankin checks	759	13½	102 46
S. C.			
A. C. 1 case antique cass.	536	20 less 1	101 84
			14,452 55
Add 10 per cent.			1,445 25
			$15,897 80

(*Deposition of John R. Howe.*)

John R. Howe, called by libellants. Sworn in open Court. I have been sailing for twenty-five years. Sailed on a steamboat, not on a propeller. Have sailed on these lakes nineteen or twenty years. Have been in the harbor of Presque Isle. With the wind N. E., or E. N. E. in a storm, to go in, preparations should be made to let anchor go as soon as in. If I made up my mind I could not lay at the dock, I probably should get both anchors ready, if I could get to them. I should think it prudent to have both anchors so that I could use them, if necessary. That preparation should be made outside if the vessel is so that it can be made. Also, it would be well to have preparations made to slip the chains, if necessary. These preparations would not be more than ordinary precautions. E. and E. N. E. would both be favorable winds from Thunder Bay to Presque Isle. It is called thirty miles from Presque Isle. A vessel with that wind, if I had nothing to call me into Presque Isle, I would keep her along in her course. I consider that a dangerous place to go in, in the night or day, in a gale of wind and a snow-storm. It would be more dangerous at night.

Cross-examined by Respondents.

A severe gale and a snow-storm is considered dangerous anywhere. If I were close in, I would be more likely to try to make that harbor than if I were further out in the lake. If it was snowing, and it cleared up so that I could see where I was, there might be an inducement to go in. In good weather, vessels at Presque Isle may be from a half to two miles off. It depends how we shape the course at Thunder Bay. I must judge from circumstances at the time in which I may be placed. I remember the storm; it was a pretty severe gale of wind on Lake Michigan. The difficulty at Presque Isle is difficult entering; it is a crowded course, and with the wind eastward there is danger of being thrown on the beach. There are spots of good anchorage there. There are spots where the anchor does not hold very well. Some anchor near the pier, others anchor towards the lighthouse. It may depend much on the state of the wind. I have gone in there at night. The nearest settlement is False Presque Isle; three or four families; the light-house keeper at the point. I have known Captain Mallon for ten or fifteen years. Have nothing against him being a fair sailor.

Re-examined by Libellants.

I think I have been out in as severe a gale. About two weeks before that, in a gale of wind from N. W. I was out five miles, and I refused to go in. I told the owners I did not believe we could get in safe, and I would not take the responsibility as master of the Illinois. The master should be governed by different gales of wind, and cir-

cumstances, and positions. I was then bound for Sault St. Marie. When one anchor drags we let go another anchor, if we have a chance to get an equal strain on both before the vessel struck. If the chain is paid out, the second anchor would be of no use. If there is sea room, and thirty fathoms paid out on one anchor, and provided there were sixty fathoms of chain, I would let off the second if she dragged, and would pay out on the second till I got an equal strain on both.

Re-cross-examined.

There are bolders in some places in Presque Isle Bay. Some places sandy, and some places there is mud.

(*Deposition of George R. McCarter.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

PROPELLER NIAGARA, her Machinery, Tackle, &c., ANSEL R. COBB, CORNELIUS H. CANFIELD, FRANKLIN LEE, WILLIAM H. ABELL, JOHN ALLEN, Jr., and HUGH ALLEN, Claimants.

In Admiralty.

Depositions taken on the part of the libellants, by consent of parties, before Winfield Smith, a commissioner of this Court, at his office in the city of Milwaukee, on the eleventh day of September, eighteen hundred and fifty-five, and on the several subsequent days named in the body of said depositions. At which first named time and place appeared Mr. Newhall, of counsel for the libellants, Mr. Lynde, of counsel for the claimants, and George R. McCarter, a witness, who being duly sworn, deposes and says :—

I was in the employ of Sexton Brothers & Co., the libellants, in the early part of May last, at the time of the reception of goods from the Niagara. I opened and examined packages of those goods in connection with Mr. Storrs, who was head clerk and general manager in the libellant's store. He has since died. I was down at the propeller Niagara when she was lying at the dock of the red warehouse occupied by Goodrich & Hunter. I was on board of her while she was there. I was not down in the hold. I had sufficient on the deck. The smell was excessively bad. I saw some of the packages of the libellants' goods in the warehouse, and some on the dock. They were apparently damaged by water and other things; on some of them the marks were almost obliterated. Some of them were blackened. The odor was bad; more that of codfish than anything else. Those goods were carried to several places; some of them to Sexton's store, some to Caleb Wall's auction-room, and some to

John Rooney's auction-room. I should think the larger proportion went to Wall's auction-room; though I don't know precisely about that. I saw some of the goods at Wall's, and at Rooney's auction-rooms, though I paid no attention to those at Rooney's. Those at Wall's were badly damaged by water and other things; by water principally. I saw there sheetings and shirtings, denims, and striped shirtings; also, I think, calicoes, but I did not notice them particularly. I think I saw there, too, some sheep's greys. I don't remember seeing handkerchiefs there. I was there but a very short time, and looked on at the auctioneering. The goods were stained and discolored. They were darkened, some yellow, and some almost a brown. There was a bad smell about them, like rotten codfish mixed with other stuff, principally codfish, though. There were shirtings and sheetings received (amongst other goods) at the libellant's store, also denims and stripes; some satinetts were taken to the store, but not received, and sent to the auction-room. A large quantity of batts were received there in good condition. There was also received there a box of linen handkerchiefs, a box with broadcloths in it, a box of checks (cotton goods), and I think a box of yellow flannels, though I am not certain about that. There were some blue drills (one case), and a case of corset jeans, I think, though I am not certain about that. I remember a dray load of crash towelling, the box having been split open, which the drayman said had come from the Niagara. The other goods, besides the batts, were more or less damaged; some of them were wet, and some were damaged by the smell; some were damp, and some were wet. The smell was so bad that I was several times made sick at the stomach, and was obliged to leave them. I am speaking of the goods which were retained in the store, as not being so badly damaged as the others. Some of the goods I opened, and examined in connection with Mr. Storrs, and some alone; some of them were sent away after examining, some to Mr. Wall's, and some to Rooney's. In all of them, I think, the outward appearance was good. I can't tell how large an amount was sent away. All the satinetts that came to the store were sent away, some pieces of denims and stripes, and some bales of sheetings, were sent away; I don't know, but more than two, at all events. I cannot tell what proportion of the goods that came by the Niagara came to the store, nearly all the batts and most of the sheetings. I won't say most of the sheetings; I don't know about that. Some of them came to the store, also some of the stripes and denims; some checks were retained. The handkerchiefs, and crash, and the satinetts were not retained. The goods received by the Niagara were all that were received by the libellants at that time.

Cross-examined by Mr. Lynde.

Mr. Storrs told me there was a list made of the goods that went to the auction room. I did not see it; all the goods that I opened were damaged more or less, and I think I opened all, or nearly all

that came to the libellant's store. The batts, and some bales of wadding, were not damaged. I saw some of the goods as they came out of the hold of the Niagara. I can't say that any of the goods I opened were the particular ones I saw at the Niagara. I understood from the men at the warehouse that the batts and wadding were part of her deck load. I have the impression that the other goods were stowed in her hold. I saw bales of sheeting and bales of bags come up out of her hold; some of the goods were wet or damp, and some were not. The larger proportion were damp, and some were wet. I now speak of the goods that were received and retained at the store. Those pieces which were considered too wet to be sold were sent to the auction-room, even out of the packages or bales. I remained in that store a little over three weeks. I was principally engaged in opening and marking goods. Some of the wet and damp goods which were retained in the store were sold before I went away; the others remained there when I left. None of them were spread out to dry; we left them in the packages until they were required by sales. I don't know who settled the account with the auctioneer. Mr. Austin was and now is their book-keeper. I recollect the libellants receiving some damaged goods by the propeller Illinois; that, I think, was more than a week before, though I am not certain as to dates. I was in their store at the time those goods were received. There was a large quantity, I think, over 400 packages, received by the Illinois. They consisted of dry-goods generally, but mostly for a spring stock. The goods, except the woollen goods, were much the same kind of goods as those received by the Niagara. They were badly damaged, some wet and some stained. That depended on the kind of goods. The goods by the Illinois were pretty much all disposed of before the Niagara's goods came. There might have been fifty dollars worth of them remaining in the store. I had the boxing of them myself; they were sent to the auction-room of John Rooney, except a few for which customers made bids in the store. I think the estimated amount of goods damaged by the Illinois was about $5,000 or $6,000. I can't tell what proportion. I mean by saying they were disposed of, that some of the Illinois' goods were sent out of the store before the Niagara's came, and the others put in such a situation that the Niagara's goods could not get mixed with them. I can't say that any of them had been sold by the auctioneer. Mr. Storrs and myself had all the charge of them. He invoiced them, I did not. The General Taylor had, some two weeks before I came there, landed damaged goods for Sexton & Co. I think it was ten days to two weeks before the Illinois came. I have forgotten whether I ever heard the number of packages by the General Taylor. The damaged goods that came by the General Taylor were sent to Brown & Kirby's auction-room. I understood so, but I don't know that they were all sent there. The Illinois' goods were disposed of, so that there was no danger of their being mixed; so that we could know them apart, and there was no danger of any confusion.

[The testimony as to the goods by the Illinois and General Taylor taken subject to objections.]

Wednesday, 12th September, 1855.

Examined further by Mr. Lynde.

The two cases of satinetts brought to the store showed no damage outside, but, on being opened, proved bad; some three or four bales of sheetings, I don't recollect exactly how many, proved so. I recollect a case of Ebenezer prints—a peculiar kind—which were hardly damaged at all; not at all, except by the smell. I don't know that all the damaged goods which came to the store were sent to the auction-room; orders were given to that effect. I did not see them go there, but they were not kept in the store. Almost all of them I saw start for the auction-room from the store. I think the goods retained were appraised by Mr. Storrs. They were not regarded as undamaged goods. I think he told me that the goods we retained at the store were to be appraised by him, and the account given to the Insurance Company. The goods were damaged by the damp, mildew, and smell. A good many of the sheetings, denims, and stripes retained in the store were damaged. In selling them, we had to deduct from the usual price of them. There was also others damaged. I marked the goods which I opened. I don't know of my own knowledge that any others were marked. A good many of the goods which were mildewed and otherwise damaged I marked at less than cost, though not all. I did not compare them with the invoice, but I should think they were marked from five to ten per cent. below cost. Those were the worst damaged goods retained in the store. I have not had experience in wholesale dry goods stores before this. In marking goods, we separate a bale and mark each piece with the cost and selling mark. We did not mark each piece of sheetings; sheetings are never marked, but on the wall over and opposite them the marks are put. They were kept in the basement; some of them were slightly damaged, but as Sexton was short of sheetings he concluded to keep them, even at a loss. All the goods, except sheetings, were marked on each piece. The sheetings which came in the same bale were piled together, the damaged and undamaged, unless they were too badly damaged, when they were sent to the auction-room. There was an understanding among the clerks that when they came to the damaged pieces they should sell them at a proper deduction. I can't form any idea how many boxes came up to the store; over forty bales of batts and waddings came to the store, and I should think forty bales of other coarse goods, sheetings, denims, and stripes. A few of those were sent back to the auction-room. I am not certain but there were a hundred bales of batts, or sixty bales of sheetings; I have forgotten; I can't tell within twenty bales. I know there were forty bales of batts, and how many more I don't know; I don't remember the number of others.

Re-examined.

When I spoke of the order to send damaged goods to the auction-room, and the sending thereof, I mean those which were so badly damaged as not to be saleable. I think none of the goods were marked at a greater discount than ten per cent. off from cost, including transportation and insurance; that is my impression. Five per cent. is the amount added for transportation and insurance to New York cost. There were about six salesmen in the store then. I think it is the largest wholesale dry goods store in the city.

GEORGE R. McCARTER.

(*Deposition of Arnold H. Greve.*)

Wednesday, 12th September, 1855.

Arnold H. Greve being duly sworn, deposes and says:—

I am a merchant dealing in dry goods in this city. In the spring of this year I was in the firm of Plathner & Greve, in this city.

Question. Did that firm receive any goods in the spring of this year which were shipped on the propeller Niagara last fall? And what was the condition of such goods when received?

[Objected to by claimants' counsel as irrelevant.]

Answer. The firm did receive such goods last spring. Two-thirds of them were badly damaged, to the amount of ninety per cent., by water. They were all rotten and stained—a third of a bale, for instance, which had not been wet, would be all mouldy, so that it could not be used. Some bales were wet from a third to a half, but the whole was spoiled. A third of the goods received, perhaps a little more than a third, had not been wet at all, but was damp and mouldy, was damaged; the white goods having spots and stains on them; the woollen goods, which did not show the spots as the white goods, were sticky, and did not feel as goods in good condition do, and it appeared to me they were rotten. The goods had the same smell as the boat smelled—a rotten mouldy smell. It was more of a rotten smell than anything else.

I went down to the propeller Niagara the next morning after she came in. Probably a third or a little more of her whole load had then been unloaded. I saw a good many barrels, the wood of which seemed to me to be mouldy outside. Then I went into the warehouse and saw what they had unloaded. They were then unloading. I saw a few bales of our goods and a good many of Sexton Brothers. They were all of a different appearance; some were all black and some were all wet; some were two-thirds wet and were partly black and green; some black on one side and on the other green like what you see on the top of standing water; some were half wet and the other half badly stained with black spots on it. I speak of Sexton's goods, our goods were put up in bales and boxes; Sexton's goods looked about the same as ours. I should think some of their packages

looked damp and mouldy. I think about half of our goods were damaged by water, and the rest, I should think, by the dampness of the boat from the water. The white goods had not their usual color, and were of different colors through the piece. We had flannels and blankets, which had not been wet, which were rotten outside and stained inside. The blue and red colors would be of a lighter shade where stained. I think our goods that were not wet were damaged eighty per cent. on their value.

[The foregoing testimony, so far as it relates to other goods than those of the libellants, is all taken subject to objection.]

Cross-examined.

I have been in business in this city twelve years next spring, but not for myself all the time. I have been in business for myself one year this month. My place of business is No. 215 East Water Street, in Kneeland's Block. Before I went into business for myself I was with Mr. Plathner, my former partner. I am now alone. I was with him only as partner, not as a clerk. I used to be clerk for Alexander & Brothers. It is seven years since I was clerk for them, certainly not over seven or eight years ago. I was a clerk at Mr. Jennings' about three years ago, I think. I was with him six years ago for a short spell, and then soon after (about six months after) I went to him again and stayed five years. I left him about three years ago. I sold goods for my father after that. I sold straw goods for him, such as bonnets, hats, &c. I sold them in this city and in the country wherever I could. My father lives on Market Square at the corner of East Water Street and Oneida Street. I saw them hoisting up some of Sexton Brothers' goods from the hold of the Niagara, I should think it was about nine o'clock on the first day the Niagara was here; that I was down there the next morning after she came, I think I could not say by half an hour. I stayed about half an hour, then went away for a quarter of an hour and returned, and did not then stay so long as the first time. I saw belonging to Sexton Brothers sheetings, striped shirtings, and tickings. I saw also some other bales for Sexton Brothers containing, I think, carpet warp. I saw also, at the warehouse, batts. I saw also several packages, but I can't remember what they were. I don't recollect what any other packages were. I saw some of Sexton Brothers' goods open at the warehouse; some partly open, some of the bales half open. I don't know how they came open. I saw about half a dozen bales of sheeting open. They were standing on the end, half of the ropes round them cut, and the half of each the bales open so that you could look in. Half the bale was cut open. The best part of the bale was cut open to show how it looked. I paid particular attention to see which end was open, and I saw that the best end was open, and the end unopened was much blacker than the rest. I have talked with Mr. Newhall the other day about this, I think yesterday. I have also spoken to my partner about it, and to Mr. Whaling. Our

goods were insured in Mr. Whaling's Company, the Commercial. Our loss has been settled by the company. We did not take any of the goods, but gave them to the Insurance Company. Our claim was paid. The full face of the policy was paid to us by the Insurance Company. The amount paid us was about five hundred dollars, I believe. The best of our goods sold, I think, at fifty per cent., and some at seventy-five per cent. off. I did not go to the auction myself, but this is what I heard. We notified the company that we abandoned the goods before the Niagara got here. We did not exactly notify them, but told Mr. Whaling we did not know how the goods would look when they got here. When I first came back from the warehouse, after the Niagara got here, I met Mr. Whaling and told him the goods were in a very poor condition, and I guessed we would not take any of them. I did not go back to the warehouse after that. I went to the warehouse twice that morning. I did not open any of our packages while I was at the warehouse. The goods came to the front of the store and a part of them to the back of the store. We opened some packages there. We had about nine or ten or twelve packages in all, among which were three or four bales of sheeting. We had six bales of batts. We had a bale of blankets. I think there was one box of goods, but I am not very certain. There was one bale of flannel also. We had also two bales of carpet warp. I don't recollect what was in the box. The batts had not been wet. I think they were damaged. They looked as if they had been in a damp hole a long time. They were knotty. They felt like paste. I don't know whether any batts were taken out of the hold of the Niagara. I saw them lying near the hatch just where the sheetings and other goods were that they were taking out of the hold, and so I supposed the batts came out of the hold. I saw a great many barrels there, and saw some wooden ware. I did not see much about her deck load. The second time I went there I saw them hoisting barrels out of her hold and rolling them where the others lay on the wharf. For that reason, and because those on the wharf looked like those which came out of the hold, I thought they all came out of the hold. When the sheetings came to the store we put them on one end and opened the end we thought was the best and examined them. They felt very pasty and you could tear them very easy, they were rotten. We opened the flannel goods. They were in a bale. We took the sacking off of one end. Then we put it on again and sent the bale where Mr. Whaling told us. We took some of the pieces or rolls out and put them in again; the bale was close to the back end of the store. We had but one bale of flannel. That was all blue flannel. There are strings through the end of the pieces to fasten each piece. There were no boards in them. We took out some pieces and put them back again. We did not unroll any of the pieces of flannel entirely or at all. The strings on many of the pieces were broken. We pulled out the flannel from the centre of the piece at the end to look at it, to look how far the dampness had gone. We

pulled out the centre of the roll a few inches to examine it. The roll I examined was, perhaps, forty or forty-five yards. The blue flannel was not rolled very tight, so that I could very easily pull out the centre of the roll a little ways. They were not Shaker flannels. I think they had a selvage on the edge. The selvage was very narrow, an eighth of an inch wide, say. I did not see any of Sexton Brothers' goods opened except at the warehouse. There I had the pieces opened so that I could feel into them and examine them pretty well. I did not feel into the sheetings, I felt into some striped shirting. The ends were open so that I could look and feel into them. We have paid for the damaged goods we received by the Niagara. They were mostly cash articles, and what was not paid for at the time has been paid for since, dollar for dollar. My old partner is now in the city, in no business. I don't know what was the occasion of his going out of business. I bought his interest. I saw ten or twelve bales of sheetings at the warehouse on which I saw Sexton Brothers' name; others were so badly damaged that I could see no name upon them. The bales looked as black as the marking, I think. I saw and examined thirty to thirty-six packages of goods belonging to Sexton Brothers, but they were not all open. What were not open I examined outside. There was a large quantity of goods of all kinds there. I don't know who they belonged to; some were Kupper's and some for Cordes. Cordes' were not dry goods. I saw a couple of bales belonging to us, and some on which I could not read the name. I went through them all looking for ours, and found only two bales of ours, but I saw a large quantity of Sexton Brothers'. I looked very much for more of our goods but could only find two bales, one bale of batts and one of sheeting. I did not open any sheeting there. One bale of sheeting was not open. One end of the bale was black, so that I could not read all of the firm's name on it. I saw no goods there (except those in the barrels) but what were damaged. The dry goods were all damaged more or less, I should think.

Re-examined by Mr. Newhall.

I did not see our goods after they left our store; our goods went over to Mack's old store, where Wall was then having an auction room. I wish to say that I went down to the warehouse the morning the Niagara commenced unloading. I think it was the morning after she came in, but there may have been a Sunday between.

Cross-examined by Mr. Lynde.

I should think I saw at least ten or twelve bales of batting at the warehouse, belonging to Sexton Brothers, with their name on them. I examined some of their batting, and what I did examine, was in the same condition as ours. I felt into theirs and grabbed out a handful. It was not stained, but was of a different feeling from good batting; damp and mouldy and sticky.

ARNOLD H. GREVE.

(*Deposition of Joseph Phillipps.*)

Joseph Phillipps being duly sworn, deposes and says :—

I am a merchant, dealing in dry goods in this city. I was down at the Niagara after she arrived here last spring, looking for goods of Phillipps & End (of which firm I was then a member). They were goods shipped to us the fall before. I saw a number of packages of Sexton Brothers' goods; some in the warehouse, and some they were getting out of the boat. I saw sheetings, denims, stripes, and diaper.

[The testimony of this witness as to damage is objected to as too general, and his testimony taken subject to objection.]

Some of them appeared to be wet; most of the bales entirely black, and the contents in about the same condition. I saw some, on which was a kind of dry mould. I felt of some of the goods as I was going by, and felt that they were all warm, smoking, heated. There was a very bad disagreeable smell about the goods and boat. Our firm received two cases of goods by the Niagara; striped shirtings, furniture checks, Canton flannels, and some linseys. Half of the cases was wet, and had been apparently under water; the goods were half wet; and on the other part of them was a kind of dry mould or rot; that is, in one case. In the other, half of the goods were in a pretty fair condition; some of the Canton flannels were not wet; they were kind of damp; they were in such a condition that, by taking good care of them in an airy place, they could be used. The damage on the best goods was appraised at $33\frac{1}{3}$ per cent., which, I think, was about right. The damage on the other goods was from about 50 to $87\frac{1}{2}$ per cent. There was a bad smell about our goods; so bad that I hurried them out of the store as fast as I could get them out. The goods were all heated more or less, for they fairly smoked when I opened the cases. They were packed in dry goods boxes.

[The testimony of this witness, as to the goods of Phillipps & End, objected to by Mr. Lynde as irrelevant and taken subject to objection.]

Cross-examined by Mr. Lynde.

It was not very warm weather when the Niagara arrived here; not uncommonly warm weather. It was not among the warmest weather we have had this year. I think we were insured on our goods in the Commercial Insurance Company. Some of the goods I kept with the consent of the company, and the rest I abandoned to them. I first learned this morning that the company wanted me as a witness in this case. I mean by dry mould, where a thing has been wet or in a damp place, and got dry and heated, and there are green spots on it. Sometimes it leaves a little fuzz. It generally spoils the goods. It extends mostly through the whole piece. I

opened some of the piece-goods that came to our store to see how they looked. I unfolded them; all of our goods were either wet or a little damp. None of them were rotten.

JOSEPH PHILLIPPS.

(*Deposition of Daniel Andrews.*)

Daniel Andrews being duly sworn, deposes and says:—

I was in the employ of Sexton Brothers & Co. last spring at the time of the reception of goods from the Niagara; I was salesman in their store; I was down at the red warehouse when the Niagara lay there, and I saw some of the libellants' goods there. Mr. Storrs examined the goods there and directed where they should be sent. Some of them were sent to Mr. Rooney's; some to Mr. Wall's auction-room, and some of them came to the store. The goods which I saw at the warehouse looked bad; they were damaged by water, and had a bad smell about them. There was a smell of codfish and other things about them. Some of the goods were damp. Those goods which appeared the best were sent to the store. Different kinds of goods came to the store. Sheetings, shirtings, denims; some prints, batts, cottonades; some handkerchiefs also, and some broadcloths, which last were all, I believe, sent away again. Some sheetings and a box of cottonades (summer goods), were also sent away again. Some pieces out of the bales which were badly damaged we sent away, and some not so bad we kept. The shirtings included stripes and brown and bleached shirtings.

All the goods received at the store were more or less damaged, except some of the batts, which were perfect, and some of them were not. There was a bad smell about the goods; they all felt more or less damp. Some of the prints, in one case I opened, were wet; several pieces of them. They felt warm when you put your hand upon them. Cotton goods always get warm when confined in a close place with water by them for some time. There was mildew upon some of the goods received at the store.

Question.

What was the amount of damage on the different kinds of goods you have described which were received at the store? And to what percentage of their value were the same injured? State particularly.

[Objected to as being too general and vague, by claimants' counsel.]

Answer. I should think the damage on them would average from twenty to twenty-five per cent. Some were damaged more, some less, but I should think that a fair average. Some of the batts were perfect. Some of the goods received at the store were, after being opened, sent to the auction-room, to which one I don't know. Mr. Storrs to whom I referred, is dead.

Cross-examined by Mr. Lynde.

I am twenty-four years old. I have been four years about with Sexton Brothers. I was not down at the warehouse all the time that the goods were being unloaded. I did not look over all the goods with Mr. Storrs. I was not down there over an hour. I was down at 2 or 3 o'clock in the afternoon the second time (I was there twice). The first time I was there but a short time. The second time I had no business there, but merely went down to see how they looked. The boat was gone then. I helped Mr. Storrs after I got there. We were trying to find out what the marks were on the goods. They looked so black we could not see the marks. Some of them were sent up to the auction-room while I was there; how many I don't know, but more than two loads, I know. I think there were some 300 packages or over received by the Niagara for Sexton Brothers, but I don't know exactly. I got that impression from having seen the bill of lading. I can't tell anywhere near how many packages were received at the store. I did not attend to it. There were a great many batts received, not many boxes. I helped unpack some of these goods. The goods found to be wet on unpacking them were not all sent to the auction-room. I sold myself some denims which had been wet—got mildewed and kind of dried up again. I don't know how many pieces I sold, it might have been half a dozen or ten of them. I don't recollect to whom I sold any of these goods, nor the price I got for them. It was less than the cost. I did not sell according to the mark. We sell some goods there without their being marked. I made a reduction on these goods which was satisfactory to Mr. Sexton, with whom I had a conversation about it. He thought we ought to make a discount on them from the usual sale price. I am pretty sure I sold them below cost. I know what they cost. I don't know what I sold them for. Some of them we got our regular price for. Some sheetings we sold less than cost. I sold some myself for less than cost, but I can't tell to whom. I can't tell how many bales of sheetings came to the store. I have no idea. I did not attend to the business, Mr. Storrs had that all to himself. I did not examine all that came into the store. Some of the goods retained in the store were, I think, damaged more than twenty per cent. I could not tell what goods were damaged more than twenty per cent. which were retained in the store. I can't mention any particulars. I don't think there were many, but I could not tell how many. I could not tell how many cases of goods were received at the store. I saw some received there. Some of the cases contained prints and cottonades; some of the prints were wet. I only recollect one box of prints received at the store which had been wet. In that box five or six pieces had been wet. In those other boxes which I assisted in opening some of the goods were in a perfect state, and some were not. Some of them had changed color. Some of the colors had been changed. I don't mean all the colors. The atmo-

sphere is very apt to change some colors. I don't think they had changed color any more than they would have done if they had been on the shelf in the store. It hurts the sale of prints to have the colors or some of the colors change. They won't bring so much as a perfect print. I don't know how many boxes of prints there were. I did not examine all the prints. I can't tell how many prints were damaged in any way. I recollect some bales of bags which came to the store. I don't recollect how many there were, or how many I saw. They were changed in looks. They looked yellow. I opened some of the bales myself. The edges looked yellow, not the middle. I don't think it hurt the sale of them much. I think there was some yarn came off, but I am not sure. I don't know of any goods that are called ivines. I think there was a bale of flannel which came to the store, but I am not very sure. I recollect seeing some diaper come up on a dray. There was no bale, it was all torn open. It is similar to crash, but the name is bird's-eye diaper. I don't know anything about that, whether it was damaged or not, whether it came into the store or not. I don't know how many bales of striped shirtings came into the store. I think there were some. I don't know that I helped open any or sold any. I know nothing about their condition. I don't recollect whether any of these denims came in boxes, nor how many there were. I opened a bale or two of them down stairs. Those which I helped open were in a bad condition. The outside of the bale looked dry, though it showed it had been wet once, but the inside was mildewed. We opened two or three which were in that condition, though not all so bad. I don't know anything about the other bales. Some of those we opened we kept, and some were so bad we sent them to the auction-room. I know nothing about any brown drills being received at the store. I think there were some brown drills on the Niagara, but I don't know what became of them. I don't know how many bales of brown sheeting were received at the store. I think I have handled some brown sheetings which were received by the Niagara. Some of them were stained on the sides of the bales. The sheetings were stained on the folds. I don't know how many were stained. The few bales that I opened were so. I myself sold some of these sheetings. I think this damage injured the sale of them some. I can't tell how much. There ought to be some deduction, but I can't tell how much we made. I think there were some ticks, but I am not sure. I did not examine them that I know of. Several bales of the batts were injured. I think those which were damaged, were some of them damaged a quarter of a bale. It would injure the sale of them a great deal. I suppose the largest proportion of them were not damaged. I don't know how many. The bales of batts which were not damaged looked as usual. I don't think many of the batts were damaged.

DANIEL ANDREWS.

(*Deposition of Edwin H. Goodrich.*)

Thursday, 13 September, 1855.

Edwin H. Goodrich being duly sworn, deposes and says:—

I am a merchant in this city. I am a wholesale dealer in dry goods, of the firm of Williams, Bonnell & Co. I knew Mr. Storrs, former clerk of Sexton Brothers, in his lifetime. I examined, in his presence, some goods at Rooney's auction-room, belonging to Sexton Brothers, which had come by the Niagara. There were sheetings, denims, blue drills, cottonades, some cotton checks, I think Silesias (cotton goods), a few glazed cambrics, I think, and some woollen goods, some cambric handkerchiefs, some cassimeres, and one or two pieces of broadcloth; that is all I recollect now. The cassimeres and broadcloths constituted the woollen goods I mentioned. I don't remember any satinetts; I did not charge my memory with them, from the fact that Mr. Boyd kept a memorandum of them. Those goods were all damaged. About some of them there was a bad smell. There was some mildew about them. Some of them were very badly discolored and stained. Some of the Silesias in particular were stained with some black liquid resembling ink. Some bales of sheetings were worse damaged than others. Some bales of denims were worse than others. Some of the sheetings were mildewed and rotten. Some were not. We appraised the sheetings at thirty to fifty per cent. damaged. I think the average amount of damage on the goods we examined was about sixty per cent. of their value. Some goods were damaged more than that. Some Silesias we appraised the damage on as high as eighty-five per cent., I think. The handkerchiefs were also very badly damaged.

Cross-examined by Mr. Lynde.

I can't state the precise time when this appraisal was made. I have no way of ascertaining the exact date from any record of my own. I think, from common report at the time, that these goods came from the Niagara. That is all the information I have about them. I was called on to appraise them as such. There were some of those goods from which I did not perceive any smell to arise. I don't know that I discovered any smell from the Silesias. I think we appraised the damage on them at as high a rate as on any other goods. I think those Silesias belonged to Sexton & Co., because Mr. Storrs so represented. I saw no marks on them. There was perhaps fifteen pieces of them, not a full case. We discovered more of an offensive smell in the cassimeres and broadcloth, because we examined them more closely, being higher-priced goods. I think there was only one piece of broadcloth. I don't know how many pieces of cassimeres there were. I am confident of twenty, perhaps more. I am not certain that there were no satinetts. Some of the cassimeres were wet through; on some only the end of the piece was wet. I can't recollect the

amount of damage we appraised on the cassimeres. Mr. Storrs took a memorandum of the damages we appraised, and Mr. Boyd took another. They were to be compared and made to agree, and we were to sign them. I never signed them, or saw them from that time. I could not say anything about the number of cases or bales there. There must have been twenty or twenty-five whole bales, the contents of which had not been taken out. We cut open the sacking of these, to examine them. Part of these were sheetings, part denims, part stripes, part blue drills; but I can't tell how many of each. I think there were some bags there; I can't tell positively. I don't recollect any yarn there, nor flannels. There were some other white goods near the Silesias, and some in the box where the handkerchiefs were, but I can't think what goods they were. The box of handkerchiefs was not filled with handkerchiefs; it was a small box. There may have been fifty dozen handkerchiefs. They were not in the box in which they were originally packed. Some of the black glazed cambrics we threw back as sound, and would not allow any damage on. None of the goods appeared to have been damaged which had not been wet. All we appraised as damaged had been wet. We did not examine any goods as to the smell, except the cloths. These being colored goods, there was no stain on the dark-colored ones, and for that reason we smelled of them, to see if there was any acid or anything else on them that would injure them. I can't recollect what damage we estimated on them. I think the piece of broadcloth we appraised at fifty per cent. That is the only piece of cloth of which I recollect the appraisal. The cloths smelt very bad; some of the cotton goods smelt bad. They were (some of them) covered with a sort of mucilage slime. That was on the outside of the bales, and the ends of the pieces. The sacking on bales frequently gets torn in coming. I did not hear Mr. Sexton, or Storrs, or any of them, say anything about any damaged goods that had come by the Illinois. We appraised all of Sexton Brothers' goods that I ever knew of, which were at Rooney's, except an article or two unintentionally overlooked. I do not know whether those goods came from the Niagara or the Illinois. I could not swear that the Niagara had arrived before we made this appraisal. I had heard that she had got in. Mr. Boyd and I had some talk about the average amount of damage to the goods, and I think the remark was made between us that it would be about sixty per cent., taking the goods through. At all events, I made up my mind, at the time, that that amount was about correct. That is a mere opinion, not based on any calculation. I could not state with any certainty the value of those goods in a perfect state. I could not be confident within 300 or 400 dollars. I would put it at between thirty-five hundred and four thousand dollars; that is a mere opinion, however. Mr. Storrs had a schedule showing the number of pieces of different kinds of goods, and the first cost of each. We had not the invoices there, the amounts were not carried out on the schedule, and it is only guesswork as to the amount.

Re-examined by Mr. Newhall.

There were no goods there undamaged, that I recollect, except the pieces of glazed cambric which we threw back, as I have stated. I recollect that at this same time there were damaged goods at Mack's old store.

EDWIN H. GOODRICH.

(*Deposition of Joel Hood.*)

Joel Hood, being duly sworn, deposes and says as follows: I have been a merchant and auctioneer in this city for eight or nine years, most of the time. I was on board of the propeller Niagara while she lay at Goodrich & Hunter's dock this spring. I looked into the vessel's hold. She had the appearance of having lain in the water several months, with goods aboard of her. I saw a good many goods, of various kinds, aboard. The appearance was as if they were damaged. They were dark, as if they had been under water some time, and had a bad, filthy smell about them. I had the selling of part of the goods which came by her, and these I examined. I sold for the United States Insurance Company the goods belonging to Neiman & Co. (groceries), also those belonging to W. P. Young & Co., and to Durand & Lawrence (all groceries). I don't remember selling any others. I should judge that the cause of damage to those goods was their being under water. In the three lots I sold, a portion of the goods had been wet, and a portion had not been wet.

[Mr. Lynde, counsel for the claimants, objects to the foregoing testimony, and to all testimony relative to other goods than those of the libellants, as irrelevant, and such testimony is taken subject to that objection.]

I found some of the teas of Durand & Lawrence's lot that had become damp, heated and musty, which did not seem to have been under water; they were damp and moulded. The chests were mouldy outside, and had been so exposed to dampness that the glue had perished and the chests easily came to pieces. That caused the chests to break, and the tea lead to get torn, which exposed the teas to dampness. Some of the raisins had become damp and soured. I would state that the only raisins I noticed were two boxes that I had not sold, which remained in my store some two weeks. When I came to open them, I found they were soured. The others, which I sold, looked well, and were swelled out and damp, and were sweet; they had not been out of the vessel long enough to heat. The two boxes, I have no doubt, were good and sweet when I got them. The coffee was damp, but were not materially injured; a few bags had been in the water, and they, of course, were spoiled. Some of the cigars which had apparently not been in the water, had yet collected so much dampness as to become mouldy, they having probably been very near the water. Tobacco is a bad article to collect dampness.

J. HOOD.

District of Wisconsin, ss.

I certify that the foregoing depositions were taken in my office, in the City of Milwaukee, in said District, on the several days therein mentioned, in presence, and by consent of the counsel therein named.

That the witnesses being severally sworn to tell the truth, the whole truth, and nothing but the truth in said cause, were then examined, and their answers by me reduced to writing, and then carefully read over by me to them, and then signed by the witnesses respectively.

Witness my hand, at Milwaukee aforesaid, this thirteenth day of September, eighteen hundred and fifty-five.

WINFIELD SMITH,
U. S. Commissioner.

(*Deposition of George Cogswell.*)

LESTER SEXTON & OTHERS
vs.
THE PROPELLER NIAGARA.

Oct. 31, 1855.

George Cogswell sworn in open Court.

The libellants had some goods lying in Larkin's (the red warehouse), where the Niagara was lying. There was a young man there who was acting as clerk, had a book, was superintending the goods. They were taking the goods out of the warehouse and sending them up town. I examined goods of libellants, made an appraisal of damages with Mr. Dibble; the goods were marked Sexton Brothers & Co. Mr. Storrs was there for Sexton. Some of the goods were wet, and difficult to discover the marks. Some of the goods were sent to Wall's, he had a store for the purpose of receiving the goods. This is the appraisement: The damage of eight bales of Russell sheeting is $180 $\frac{57}{100}$. The damage of twelve bales of Boston sheeting is $324 $\frac{14}{100}$. The damage of five bales of Hampton sheeting, $131 $\frac{70}{100}$. Four bales of Atlantic sheetings was $151 14. Nine Pacific sheetings, $319 58. Two bales Keystone sheeting, $30 72. One bale Jewett city ticks, $37 75. Two bales Humboldt ticks, $89 62. One bale Amoskeag denims, 43 $\frac{12}{100}$. Five bales Jewett city denims, $198 89. One bale Shetucket denims, $32 34. Five bales Omega denims, $236 66. One bale Amoskeag stripes, $36 17. Three bales Jewett city stripes, $119 04. One bale Shetucket stripes, $5 87. Two bales of the—$27 98. Four bales Jewett city stripes, $116 68. One case bleached shirtings, $85 99. One bale of yarn, $32 19. Seven bales bags, $132 83. One case of prints, $69 74. One case of prints, $45 62. One box of five pieces of prints, $7 34. Seventy-two dozen spool thread, $31 87. One bale of wadding, $5 80. Four bales of cotton twine, $13 47. One case cottonades, $125 00.

Six bales Union blue denims, $202 13. One case satinetts, $116 16. Three pieces of satinett, $6 67. Four pieces cassimère, $22 27. Sixty-five pieces of white and brown diaper, $173 42. The last article was appraised on the twenty-fifth of May last. The others were appraised on the twenty-first of May last. The amounts above stated are the amounts of damage to those goods. We examined the goods carefully to ascertain the extent of the damage. I have been a merchant, and I think I am capable of forming a judgment. The damage was caused by the goods being wet, and some were mildewed and heated; we opened every package.

Cross-examined.

We examined the goods for the purpose of giving our opinion as to the amount of damages, at the request of Mr. Whaling, the Insurance Agent. These goods were all marked Sexton Brothers & Co. S. B. and Co., and Sexton Brothers. I made out this statement and delivered it to Mr. Whaling. I am not aware that the owners or officers knew of the appraisement, or took any part in it. These goods were sent to Wall and sold at auction. I was present at the sale. I did not know on whose account the sale was made. Mr. Whaling told me to keep an account of sales, which I did. I do not recollect what become of the paper. The sale was more than the appraisement; I think one hundred dollars. It may have been five hundred dollars. I do not recollect the amount; my impression is it was between one and two hundred dollars.

(*Schedule A.*)

Schedule A, being appraisement referred to in the deposition of George Cogswell.

We, the undersigned, being requested by Wm. J. Whaling, President of the Commercial Insurance Company of Milwaukee, to appraise the damage of the following merchandise, do appraise said damage on the several lots and packages respectively as follows, to wit:—

(Merchandise received by the propeller Niagara, marked Sexton Brothers & Co., Milwaukee.)

8 bales Russell sheeting, 6,193¼ y'd, @ 6⅝,	$410 33	
10 per ct. added,	41 03	
Damaged 40 per cent. on	$451 36 is	$180 53
12 bales Boston sheeting, 10,914 y'ds, 6¾,	736 69	
10 p'r ct. added,	73 67	
Damaged 40 per cent. on	810 36 is	324 14

5 bales Hampden sheeting, 3,862¼ yd's, 7¾,	299 32		
10 per cent. added,	29 93		
Damaged 40 per cent. on	329 25 is	131	70
4 bales Atlantic sheeting, 3,330 yd's, 8¼,	274 72		
10 per cent. added,	27 47		
Damaged 50 per cent. on	302 19 is	151	14
9 bales Pacific sheeting, 7,377 y'ds, 8 c.,	590 16		
10 per cent. added,	59 01		
Damaged 50 per cent. on	649 17 is	319	58
		1,107	09
		1,107	09
2 bales Keystone sheetings, 980 y'ds, 9½,	93 10		
10 per cent. added,	9 30		
Damaged 30 per cent. on	102 40 is	30	72
1 bale Jewett city ticks, 766½ y'ds, 9 c.,	68 99		
10 per cent. added,	6 90		
Damaged 50 per cent.	75 89 is	37	95
2 bales Humboldt ticks, 1,417 y'ds, 11½,	162 95		
10 per cent. added,	16 29		
Damaged 50 per cent. on	179 24 is	89	62
1 bale Amoskeag denims, 603 y'ds, 13,	78 39		
10 per cent. added,	7 84		
Damaged 50 per cent. on	86 23 is	43	12
5 bales Jewett city denims, 3,709 y'd, 10 c., less 2½ p'r ct.,	361 63		
10 per cent. added,	36 16		
Damaged 50 per cent. on	397 79 is	198	89
1 bale Shetucket denims, 600 y'd, 10, less 2 p'r ct.,	58 80		
10 per cent. added,	5 88		
Damaged 50 per cent. on	64 68 is	32	34

5 bales Omega denims, 4,781 y'ds, 9 c.	430 29		
10 per cent. added,	43 03		
Damaged 50 per cent. on	473 32	is	236 66
1 bale Amoskeag striped shirtings, 572 y'ds, 11½,	65 78		
10 per cent. added,	6 57		
Damaged 50 per cent. on	72 35	is	36 17
3 bales Jewett city A. striped shirtings, 2,400 y'ds, 9¼, less 2½ per ct.,	216 45		
10 per cent. added,	21 64		
Damaged 50 per cent. on	238 09	is	119 04
1 bale Shetucket striped shirting, 29 in., 600 y'ds, 9 c., less ⅛ p'r ct.,	53 33		
10 per cent. added,	5 33		
Damaged 10 per cent. on	58 66	is	9 87
2 bales Shetucket striped shirting, 27 in., 1,200 y'd, 8½, less ⅛ p'r ct.,	101 75		
10 per cent. added,	10 17		
Damaged 25 per cent. on	111 92	is	27 98
4 bales Jewit city striped shirting, 3,200 y'ds, 8½, less 2½ p'r ct.,	265 20		
10 per cent. added,	26 52		
Damaged 40 per cent. on	291 72	is	116 68
1 case bleached shirting 1,386½ y'ds, 7¼ c.,	97 72		
10 per cent. added,	9 77		
Damaged 80 per cent. on	107 49	is	85 99
1 bale yarn, 250 lbs, 15½,	38 75		
10 per cent. added,	3 88		
Damaged 75 per cent. on	42 63	is	32 19
7 bales bags, 150 each, is 1,050, @ 23,	241 50		
10 per cent. added,	24 15		
Damaged 50 per cent. on	265 65	is	132 83

1 case prints, 1,811½ y'ds, 7,	126 81		
10 per cent. added,	12 68		
Damaged 50 per cent. on	139 49 is	69 74	
		2,402 88	
		2,402 82	
1 case prints, 1,974¾ y'ds, 7 c.,	138 23		
10 per cent. added,	13 82		
Damaged 30 per cent. on	152 05 is	45 62	
1 box 5 p'c prints, 92¾ y'ds, 8 c.,	7 42		
Add 10 per cent.,	74		
Damaged 90 per cent. on	8 16 is	7 34	
72 doz. spool thread, @ 42½ c.,	30 50		
10 per cent. added,	3 05		
Damaged 95 per cent. on	33 55 is	31 87	
1 bale wadding, 40 doz., 22 c.,	8 80		
10 per cent. added,	88		
Damaged 60 p'r ct. on	9 68 is	5 80	
4 bales cotton twine, 3341 lbs @ 18	61 21		
10 per ct. added,	6 12		
Damaged 20 per cent. on	67 33	13 47	
1 case cottonades, 20 p'c, 842½ y'ds, 18½ c.,	151 65		
10 per cent. added,	15 16		
Damaged 75 per cent. on	166 81 is	125 11	
6 bales union blue denims, 4,200 y'ds, 8¾,	367 50		
10 per cent. added,	36 75		
Damaged 50 per cent. on	404 25	202 13	
1 case satinetts, 520¼ y'ds, @ 29 c.,	150 87		
10 per ct. added,	15 08		
Damaged 70 per cent. on	165 95 is	116 16	
		2,936 85	

3 pieces satinett, 72¾ y'ds, @ 62½ c.,	40 47		
10 per cent. added,	4 04		
Damages 15 per cent. on	44 51 is		6 67
4 pieces cassimere, 121½ y'ds, @ 50 c.,	60 75		
10 per cent. added,	6 07		
Damaged 33⅓ per cent. on	66 82 is		22 27
		$2,965	79
Add 4 bales cot. twine,			13 47

And the total amount of damages two thousand nine hundred and sixty-five dollars and seventy-nine cents.

Milwaukee, May 21, 1855.

GEO. COGSWELL,
A. E. DIBBLE.

Also on the 25th May, A. D. 1855, we appraised as above:—

65 pieces White & Bro. diaper, 3,185 y'ds, @ 8¼,	262 76		
10 per cent. added,	26 27		
Damaged 60 per cent. on	289 03 is		173 42
		$3,152	68

One hundred and seventy-three & $\frac{42}{100}$ dollars damages.

GEO. COGSWELL,
A. E. DIBBLE.

(*Deposition of Charles Storm.*)

LESTER SEXTON & OTHERS
vs.
THE PROPELLER NIAGARA.

Nov. 23, 1855.

For libellants, Charles Storm sworn in open Court.

I saw this bill in the store. It was made out by Edward P. Whaling, a former clerk for libellants. The marginal figures in pencil were G. W. Storrs', who is now dead. The memorandum at the foot is in Mr. Storrs' writing, to wit, damages as appraised, $1,258 63, in pencil, goods sent to Rooney's (No. 1). The second paper, marked No. 2, is the goods sent to Rooney's and Wall's; those marked R. are Rooney's, those marked C. are Wall's. Those not marked are to be deducted. This last bill was taken from the check-book of goods delivered from the Niagara, taken by Mr. Storrs. The paper marked No. 3, is a list of goods retained in the store that was received from

the Niagara. The ten per cent. has not been added to this bill. The goods received in the store were damaged some. The libellants wanted the goods for their trade. I cannot say that I examined all the goods. Domestic goods, denims, and sheetings were damaged very much, and were sold less than their cost. All those goods were sold promiscuously with other goods. All the goods libellants shipped on the Niagara were insured in the two Insurance Companies here. The goods sent to Wall's were abandoned to the Commercial, and those sent to Rooney's were abandoned to the Merchants' Mutual. Some of the goods were sold out of the bales. The goods were taken in as other goods, and sold as other goods. Mr. Sexton did not specify the discounts we should make on those goods.

(*Schedule marked No.* 1.)

Merchants' Mutual Insurance Co. to Sexton Bro. & Co.

Damaged Goods per Niagara.

Pencil marks.					
		SPENCER, WHITE & Co.			
70 ℔	Oct. 28	⋕ 232 Hampden sheetings	7953	7¾	$61 65
"	Mar. 4	⋕ 235 " "	809	7¾	62 72
		DAY, GRISWOLD & Co.			
40	Mar. 2	16 pieces apron check	544¼	10½	57 15
60		⋕ 1891, 1 bale bro. drill, 787 1892, 1 " " 778	1565	8¼	129 11
		Cooperage			20
		COLLINS & BRO.			
	Mar. 2	5 bales Shetucket denims.			
40 ℔		⋕ 3651 600 3653 600 3654 600 3635 600 3646 600 300, 10, less 2 ℔			294 00
80 ℔		⋕ 31, 1 case corset jean	1120	7⅞	88 20
40		⋕ 994, 5 ps cassimere	91¾	80	73 40
50		1 " cloth	20¾	275	57 07
35		9 " selicia	334¼	8¾	29 25
		1 cooperage			25
		ENO, ROBERTS & Co.			
15	Mar. 3	2 ps. starr jean	95	13½	12 83
25		5 " Granville jean	216¾	16	34 68
		2 " Scotch diaper		100	2 00
75		20 doz. L. C. hdkf.		87½	17 50
75		13 " "		75	9 75
		A. & A. LAWRENCE & Co.			
	Nov. 2	8 bales Atlantic sheetings			
50		⋕ 8618 839 8619 815 8620 828 8621 826 8623 837 8624 830 8626 824 8627 834 =	6633	8¼	547 22
70	Nov. 4	⋕ 903, 1 case cottonades	581	15½	90 06
50		⋕ 45, 1 " 598, 20 ½ off			116 61
75		⋕ 25, 1 " 69¾, 20 ½ off			135 14

Pencil marks.					
50	℔ 1306, 1 case cottonades	606	17	103	02
85	℔ 646, 1 "	759	13½	102	46
65	℔ 31, 1 " 536, 20 1 off			101	84
	2 cases blue drill				
35	1664½ 719				
	1664¾ 731 = 1450		9¼	134	12
	8 cooperages, 2 s.			2	00
				2262	23
	Add 10 ℔			226	20
				$2488	43

(*Schedule marked No.* 2.)

Goods sent to Auction by Sexton Bro. & Co. from Prop. Niagara, May, 1855.

@ A						
℔8618	1 bale	Atlantic sheeting,	R	839		
8619	1 "	" "	R	815		
8620	1 "	" "	R	828		
8621	1 "	" "	R	826		
8623	1 "	" "	R	837		
8624	1 "	" "	R	830		
8626	1 "	" "	R	824		
8627	1 "	" "	R	834	8¼	$547 22
3651	1 "	Shetucket denims,	R	600		
3653	1 "	" "	R	600		
3654	1 "	" "	R	600		
3655	1 "	" "	R	600		
3646	1 "	" "	R	600	10–2½	292 50
235	1 "	Hampden sheeting,	R	809¼	7¾	62 72
1891	1 "	Amoskeag bro. drill,	R	787	8¼	64 93
1892	1 "	" "	R	778	8¼	64 18
A	36 bales	batts		3600	7⅞	283 50
232	1 bale	Hampden sheeting,	R	795¾	7¾	61 67
39	1 box	corset jean,	R	1120	7⅞	88 20
997	1 "	apron check,	R	669¼	10½	70 27
(H)						
H 2212	1 "	heavy twills		611	15½	94 71
O 1381	1 "	Caspian plaid		599	14	83 86
Op 903	1 "	" "	R	581	15½	90 05
Sc 45	1 "	Saco cassimere,	R	598	19½	116 61
EP 25	1 "	Elmwood plaids,	R	693	19½	135 13

V 2210 AP	1 box ass'd Verona		616	15	$92	40
S 1306	1 " So-Ro-Ro plaids,	R	606	17	103	02
nc 646 Lc	1 " Nankeen checks,	R	759	13½	98	67
Ac 31 [BM] A	1 " antique cassimere,	R	536	19	101	84
16642	1 " blue drills,	R	719	9¼	66	50
16643	1 " "	R	731	9¼	67	62
	2 pc. Starr jean,	R	60	13½	8	10
	5 " Granville		150	16	24	00
	2 " Scotch diaper,	R		100	2	00
510	20 doz. L. camb. hdkfs.,	R		87½	17	50
300	13 " " "	R		75	9	75
994	5 pc. cassimere,	R	91¾	80	73	40
	1 " cloth,	R	20¾	275	57	06
	9 " Silesia,	R	270	8¾	23	62
	1 " stripe		34	8½	2	89
284	1 bale Russell sheeting,	c	877½			
286	1 " " "	c	891½			
287	1 " " "	c	885			
288	1 " " "	c	879			
289	1 " " "	c	888			
290	1 " " "	c	885¼			
292	1 " " "	c	887	6⅝	410	30
1108	1 " Boston "	c	930			
1112	1 " " "	c	910			
1172	1 " " "	c	904			
1173	1 " " "	c	892			
1174	1 " " "	c	902			
1175	1 " " "	c	903			
1176	1 " " "	c	899			
1177	1 " " "	c	909			
1778	1 " " "	c	908			
1779	1 " " "	c	889			
1180	1 " " "	c	912			
1181	1 " " "	c	956	6¾	736	69
238	1 " Hampden "	c	808½			
239	1 " " "	c	782½			
240	1 " " "	c	808½			
241	1 " " "	c	766			
242	1 " " "	c	796	7¾	307	01
8761	1 " Atlantic "	c	837			
8764	1 " " "	c	834			
8768	1 " " "	c	828			
8762	1 " " "	c	831	8¼	274	72

6500	1 bale Pacific sheeting,	c	837			
6501	1 " " "	c	820			
6503	1 " " "	c	807			
6504	1 " " "	c	821			
6505	1 " " "	c	834			
6506	1 " " "	c	788			
6507	1 " " "	c	828			
6508	1 " " "	c	829			
6509	1 " " "	c	813	8	$590	16
226	1 " Keystone "	c	493			
255	1 " " "	c	487	$9\frac{1}{2}$	93	10
677	1 " Jewitt City denims,	c	$766\frac{1}{2}$	9	68	98
199	1 " Humboldt "	c	730			
201	1 " " "	c	687	$11\frac{1}{2}$	162	95
927	1 " Amoskeag "	c	603	13	78	39
511	1 " Jewitt City "	c	740			
518	1 " " "	c	746			
514	1 " " "	c	735			
517	1 " " "	c	736			
519	1 " " "	c	752	$10-2\frac{1}{2}$	361	63
3119	1 " Shetucket "	c	600	10–2	48	00
603	1 " Omega "	c	$958\frac{1}{2}$			
604	1 " " "	c	953			
605	1 " " "	c	$947\frac{1}{2}$			
606	1 " " "	c	959			
607	1 " " "	c	963	9	430	29
540	1 " Union "	c	709			
639	1 " " "	c	709			
652	1 " " "	c	709			
663	1 " " "	c	700	$8\frac{3}{4}$	247	36
666	1 " " "	c	700			
679	1 " " "	c	700	$8\frac{3}{4}$	122	50
676	1 " Amoskeag sheeting,	c	572	$11\frac{1}{2}$	65	78
872	1 " J. City, a 30 inch,	c	800			
374	1 " " "	c	800			
378	1 " " "	c	800	$9\frac{1}{4}-2\frac{1}{2}$	216	45
1985	1 " Shetucket, 29 inch,	c	600	$9-\frac{1}{8}$	53	25
3962	1 " " 27 "	c	600			
3986	1 " " 27 "	c	600	$8\frac{1}{2}-\frac{1}{8}$	97	50
649	1 " J. City,	c	800			
961	1 " "	c	800			
962	1 " "	c	800			
963	1 " "	c	800	$8\frac{1}{2}-2\frac{1}{2}$	265	20
95	1 case $\frac{7}{8}$ Greeville,	c	$1386\frac{1}{2}$	$7\frac{1}{4}$	100	23
	3 bales yarn, 250 ea.,	c	750	$15\frac{1}{2}$	116	25
	8 " bags, 150 ea.,	c	1200	23	276	00
4951	1 bale red twill flannel,		$538\frac{3}{4}$	$29\frac{1}{2}$	158	93

8037	1 case Globe flannel	c	1811½	7	$126 81
1358	1 " Madder "	c	1974¾	7	138 23
	5 pc. Briggs "	c	192¾	8	15 42
	72 doz. spool cotton,	c		42½	30 60
	15 bales blk. wadding,	c	600	22	132 00
	4 pc. cassimere,	c	121½	50	60 75
678	1 case orange mix'd satinetts,	c	520¼	29	150 87
	30 bundles, 4 bales twine,	c	334½	18	60 21
221	1 bale diaper,	c	3185	8¼	262 76
1093	20 pc. cottonades,	c	842½	18½	155 86
					$9,219 10
	Add 10 per cent.				921 91
					$10,131 01
	(Pencil.) Deduct am't rec'd in store				554 47
					$9,576 54

(*Schedule marked No.* 3.)

Goods Received and Retained by Sexton, Bro. & Co. from Propeller Niagara, May, 1855.

285	1 bale Russell sheeting	900		
291	1 " " "	886½		
293	1 " " "	886¼		
		2672	6⅝	$177 06
1108	1 " Boston "	926		
1113	1 " " "	927		
		1835	6¾	125 08
8765	1 " Atlantic "	835	8¼	68 89
6502	1 " Pacific "	834	8	66 72
250	1 " Keystone "	490	9½	46 55
315	1 " tick	742		
313	1 " "	751		
		1493	8½	126 90
512	1 case denims	726		
513	1 " "	745		
516	1 " "	751		
520	1 " "	737		
524	1 " "	760		
		3719	10	371 90

161

3710	1 case Shetucket denims	600		
3711	1 " " "	600		
3712	1 " " "	600		
3713	1 " " "	600		
		2400	10	$240 00
980	1 " Yantic denims	700		
981	1 " " "	700		
982	1 " " "	700		
983	1 " " "	700		
984	1 " " "	700		
		3500	9½	332 50
375	1 bale stripes	800	9¼	74 00
1986	1 " Shetucket stripe	600		
1989	1 " " "	600		
2013	1 " " "	600		
3958	1 " " "	600		
3965	1 " " "	600		
		3000	9	270 00
647	1 " Jewitt City stripes	800		
964	1 " " "	800		
965	1 " " "	800		
966	1 " " "	800		
		3200	8½	272 00
251	1 case blue drill	821¾		
253	1 " "	825		
		1646¾	9	148 21
2474	1 " Canton flannel	633	9¼	58 55
7889	1 " Hartford "	642½	9¾	62 64
4495	1 bale yellow "	618¼	25	154 56
	30 bales No. 2 batts	3201	7	224 07
	40 " A batts	4000	6	160 00
	20 " "	1000	9¼	92 50
	28 doz. overalls		3.75	105 00
	10 " strip'd shirts		3.75	37 50
	10 " denim overalls		3.75	37 50
8622	1 bale Atlantic sheeting	827		
8625	1 " " "	824		
		1651	8¼	136 21
	1 " Maverick "	658½	9	59 27
880	1 box sheep's gray	297¼	60	178 35
2384	1 case blch'd drill	1167	9¼	107 95

	3 ps. Scotch diaper		100	$3 00
	6 " Silesia	334	8¾	29 23
	1 " striped shirting	34	8½	2 89
2212	1 case twilled cottonade	611	15½	94 71
1381	1 " Caspian plaid	599	14	83 86
45	1 " Saco cassimere	598	19½	116 60
284	1 bale Russell sheeting	877½	6⅝	58 14
1630	1 case Madder prints	1952¼	7	136 66
29	24 ps. Ebenezer "	857	16	137 12
	12 " fancy "	541½	4	21 66
3811	1 case Amoskeag red	2035¼	9½	193 35
3217	1 " fancy red	1789¾	9	161 08
3227	1 " blue and orange	1642¼	9	147 80
4939	1 " " white	1725½	8½	146 66
2078	1 " pins	200	70	140 00
2160	1 " "	228	65	148 20
678	4 pc. satinetts	111¼	62½	69 53
16/18	25 " bro. linen	835¾	16	133 72
19/21	18 " "	465½	19	88 44
	37 " crash	433¼	9¾	42 16
	5 " Jaquard diaper	173¼	18½	32 05
	13 " Starr jeans	588¾	13½	79 47
	7 " Granville jean	313¾	16	50 20
	36 bales A batts	3600	7⅞	284 00
288	1 bale Russell sheeting	879	6⅝	61 24
1110	1 " Boston "	902	6¾	60 89
6508	1 " Pacific "	829	8	66 32
2210	1 case as. Veronas	616	15	92 40
				$6,415 30

(*Deposition of Garrett B. Boyd.*)

LESTER SEXTON AND OTHERS
vs.
THE PROPELLER NIAGARA.

Nov. 23, 1855.

For Libellants.

Garrett B. Boyd sworn in open Court.

Sextons had goods on the propeller Niagara, I believe. I was called on as appraiser of damaged goods by Mr. Storrs and Mr. Brown. Mr. Goodrich acted as appraiser with me. They consisted generally of a stock of staple goods, brown sheetings, handkerchiefs, linens, drills, twilled jeans, apron checks, cottonades, linen cambric handkerchiefs, diapers, broadcloths, Selicias. Mr. Storrs showed the bills of purchase, the cost of the goods. I made out a list of

the articles as we appraised it, the style of goods, and the amount of damage. This I have lost, the list. Have searched for it, and cannot find it. This was done in front of the store of Rooney, on the side-walk. We appraised the damages to the goods as low as twenty per cent., and it ranged up to ninety per cent. The average damage would be, I think, fifty to fifty-five per cent. This paper shows, as near as I can recollect, the list of goods and the amounts of damages. Mr. Storrs stood by me, and called off the goods and costs, and checked. He had two papers, and also the original packages. Mr. Storrs is deceased.

(*Deposition of John Rooney.*)

LESTER SEXTON AND OTHERS
vs.
THE PROPELLER NIAGARA.

Nov. 23, 1855.

For Libellants.

John Rooney sworn in open Court.

This is a list of the goods, as near as we could get at it, that came to my auction store, from the Niagara, in May last. We commenced the sale on Friday morning, the 17th May. Some came on drays from the Niagara, others from libellants' store. They were in a damaged condition, discolored, and heated, and all wet, more or less.

Rec'd no other damaged goods of libellants', in May, than what is on this list, except about 2,400 hundred dollars' worth that came from the propeller Illinois, of which we rendered an account to Sextons. I don't think I can furnish an account of sales, as I bought them of Dr. Weeks, at three shillings on the dollar, and Weeks afterwards not being agreed to it, I had to get them selected out of the sale books as well as we could. I had sold them as my own property. We gave no account of sales to Sextons. The goods were sold on the side-walk, except about $200 worth. There is no goods on this that came from the Illinois. These, I believe, are the Niagara's goods. This list is copied this much from the amount of sales rendered the Merchants' Mutual Insurance Company. I returned the account of sales of the goods of the propeller Illinois, and they came out right, except a small am't of check. I do not believe there can be any of those goods in this account. They were different kinds of goods. If the goods were of the same kind, they might have been mixed up.

The amount of sales was		$1,066 83
From deduct commission, 16 per cent.	$106 68	
Expenses	25	
		131 68
Nett procceds		$935 15

(*Schedule A.*)

MILWAUKEE, May 17, '55.

Damaged goods of Sexton, Brother and Co. Received by John Rooney, per prop. Niagara.

1,600	y'ds	sheeting.
1,561	"	bro. drilling.
3,000	"	denims.
1,120	"	corset jeans.
91	"	cassimere.
1	ps.	br'd cloth.
334	y'ds	Silesia.
93	"	starr jeans.
216¾	"	Granville.
20	doz.	L. C. h'dkfs.
13	"	" "
6,633	y'ds	At. sheeting.
3,773	"	cottonade.
1,450	"	blue drill.
544	"	apron check.

The libellants offered, and read in evidence the following statement, marked *A*, showing nett proceeds of goods sent to Wall's auction-room:—

(*Statement marked A.*)

Satement, showing nett proceeds of goods sent to Wall's auction, belonging to Sexton, Bro. & Co.

Sexton's goods sold for . .			$3,914 21
Int. on notes . .	$89 76		
5 p. c. commissions .	195 71		
Appraisers . . .	40		
Use of store . . .	15		
Cash for laborers .	8 50		
Expenses of man for care of goods and for cartage	25 00		
	$373 97		373 97
			$3,540 24 nett proceeds goods.

Sextons' loss . .	$6,788 76
Ded. nett proceeds of goods	3,540 24
Actual loss . .	$3,248 52

(*Respondents' Proofs.*)

And on the part of the respondents the following proofs filed in said cause, were at the hearing read and admitted.

(*Deposition of Frederick Burnham.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel and Furniture, ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, Jr., and FRANKLIN LEE, Respondents; JOHN J. TALLMADGE, Claimant.

In Admiralty.

Depositions taken on the part of the respondents and claimant, by consent of parties, before Winfield Smith, a Commissioner of this Court, at his office, in the City of Milwaukee, in said District, on the sixth day of June, eighteen hundred and fifty, and on the several other days named in the body of said depositions, at which first-named time and place appeared Mr. Emmons, of counsel for the libellants; Mr. Lynde, of counsel for the respondents and claimant, and the witness, Frederick Burnham, who being duly sworn, testifies, deposes and says as follows:—

I reside at Presque Isle, in the State of Michigan. I have resided there most of the time from ten to eleven years. The houses there are in my possession, and the men living there are in my employ. There was nobody there last fall, that I recollect, who was not in my employ, except the lighthouse keeper. I remember the time and place when and where the Niagara went ashore, but not the exact date. On the morning she went ashore it was snowing, and blew a gale of wind. The wind was very heavy. I have never known a colder storm during the season of navigation. I could not say whether I had ever seen more sea or not. I would not think I had ever seen worse wind. I do not recollect the day of the week the Niagara went ashore. I had some conversations with the officers of the Niagara, about the propeller and her cargo, before the Plymouth left, and I think on the same day the Niagara went ashore.

Question. Would it have been possible at that time, or about that time, to have built a bridge from the propeller Niagara to the shore, and get out the materials for the purpose?

[Objected to as immaterial and irrelevant.]

Answer. Probably it would have required a good deal of time, if had been done at all. I don't say that it could not have been

done. I don't think the men were there to do it. It could not have been done by the men who were there. I would not have sent any men to work at it, unless they had been willing to go. It was not the kind of work I had hired them to do. The shore there is wet and soft bottom. There are a good many springs there, and the water runs down over the beach. There are round stones there, but the shore is wet, and it would trouble a man to get along afoot, unless it was frozen. There was very little timber, or logs, or lumber cut there, out of which a house could have been erected. There was not enough to have built any sort of a building. You would have had to go not less than a mile, I think, to get timber suitable to erect a house. I think there was no way in which you could have got out the whole cargo of the Niagara, and secure it so as to protect it from the weather. There were no conveniences there. I had no houses there that were tight, except what were occupied. I do not know the tonnage of the propeller. All the houses in Presque Isle would not store her cargo, I think. I conversed with Mr. Jones, and Captain Mallon, of the Niagara, while she was there ashore.

Question. What did you advise them with regard to the propeller and cargo?

[Objected to by libellants' counsel as incompetent and irrelevant.]

Answer. I should think I did not advise them anything, unless they asked me. They asked me if there was any chance of storing the goods. Probably I told them what chance there was, but I don't recollect what I did say to them. I have not thought of it since. Probably I told them there was a small chance.

Question. Did you not tell them there was no chance of getting the cargo ashore, unless they had a tug there?

[Objected to by libellants' counsel on the same ground as the last.]

Answer. I don't know that I did. I don't recollect what I told them. There was some conversation about manning the scow there, and I think I told them it could not be handled without a tug there, without favorable weather. The bay—that part of it where the propeller lay—froze over very soon after she went ashore. That part of the beach where she lay never had been used for teams to my knowledge. It had been considered impassable for loads. I don't say that a team could not pass over it, or a load could not be carried over it. I say that I never saw it done, and did not consider it could be done, on account of the soft bottom. I think a loaded wagon would sink in there, but I never saw one. I have walked over it. A man with good boots on could go over it. There are stones most of the way, so that he could step on, and with good boots not get his feet wet. I don't know how it was then, it ought have been frozen. I mean to go round the beach. I don't think you could well have taken a team round. I think it would have been a hard case to get the cargo out of the propeller and secure it, if it could have been done at all. I don't know whether it could have been done at all, or done so as

to pay. A road would have to be built on purpose, I think, unless the cargo was carried across the water to the dock. I am speaking of the time when the men left; after that it was better weather, the ice left, and it would have been easier to get the cargo across the water; it would have been the same on the beach. It is not over half a mile from the dock to where the propeller lay; it is across the bay.

Question. Did you not tell the officers in the Niagara that you thought the cargo would be safer and better off in the propeller than on shore?

Answer. I don't remember what I told them; at that time everything had the appearance as if it was going to freeze up, and the bay close. That was the opinion, as far as I know, of every one there at that time. I would not say that a house suitable to secure that cargo could or could not have been built at that time. It would depend on the men and on circumstances. I owned all the teams then at Presque Isle. There were four horse teams, and no ox teams. At that time I should not have sent my horses over on that side of the bay for a load. Before a house could be put up to receive the goods, it would be too late to do them any service, I should think. I would not attempt to haul the cargo out of the propeller up to the houses, until we had good ice to hold up a team, so as to get alongside the propeller. We had no such ice, I should think, until the middle of January. There was not ice round the propeller all the time from the day she came ashore until this spring. She was clear of ice several days; that is, there was not much ice, so that the boats went up to her from shore—the propeller's boats. I went aboard of her inside of a month after she came ashore. It was some two or three days, I should think, after the propeller went ashore, that her crew went away. The Plymouth was at one time frozen up, and the captain thought she was frozen in there for the winter. I don't know whether she had any difficulty in going, when she got ready. There is very little chance to get supplies to our place after navigation closes. I have never been able to find any way yet. The beach is travelled with dog teams from Presque Isle—there is no other road. The mail is carried in different ways—sometimes on men's backs, and sometimes on dog teams. I furnished nearly all the supplies they had there last season. I could not have furnished supplies sufficient for wintering the officers and crew of the propeller Niagara last winter, in addition to my own men.

Cross-examined.

My business is of various kinds. It has been of different kinds since I have been at Presque Isle. I have never been a sailor. The Niagara lay, I should think, from eight to twelve rods from shore. I should have had no objections to letting my men go to assist the officers and crew of the propeller, but I would not have sent them. The men there are hardy laboring men, and ready to do most any kind of work for pay. From where the propeller lay, round towards

the dock, for about one-third of the way is wet; the balance is pretty good road; I would have had no objections to let my team to go on the good road. This diagram shown me gives me a pretty good idea of the situation of the bay and roads there, only the proportions are not right. The dry beach comes too far round on this map. The wet beach should come nearer the road up to the point, where the mark in ink is made.

[Diagram marked A, and hereto attached, is the one shown to the witness.]

I don't know that the captain of the propeller asked for my men, or wanted them at that time. He may have asked, I think he did, if he could have them, in case there should be a necessity for them. I have built several log shanties.

Question. How long do you suppose it would have taken twenty men, or all the men that could have been employed at Presque Isle, including the crew of the propeller, to put up a log shanty sufficient to have protected anything in it from snow or rain—say twenty by thirty feet?

[Objected to by respondents' counsel.]

Answer. I don't think the materials were there to have built a tight shanty on the beach, where it would have open to the wind and snow. Back in the thick woods it would be different. It would take something for a tight roof. I think the other materials might have been found there—at least in the country. At that time I had nothing to cover the roof with; there was nothing there that I know of, to roof a shanty with. I would cover a shanty with the best I had to cover it with.

Question. Would you cover it with a cow?

Answer. I would cover it with a cow, a jackass, or a goat, whichsoever I had handy. I don't know which. I have covered shanties with bark, and shingles, and boards. There was no bark to be procured there for that use, to my knowledge. We used cedar bark when we have it. I had cedar bark there, but no more than I wanted for my own use. I had bark peeled a year ago this spring. I don't know whether it is all used or not yet. If I had been applied to for that bark I would not have sold it, for I had no more than I wanted, and I could not have peeled more until next spring. I don't recollect that I ever was applied to for it. I would not attempt to say the precise time it would have taken to build such a shanty as you have inquired about. I would not attempt to say, without knowing where it was to be built, and where the materials were. It would not take very long after the logs are brought together, to put them up. It would not be tight; when the logs were put up, that would be but a small part of the work. To finish the house according to the place would be next.

Question. What would have to be done next, to make a temporary shanty, just to protect the goods from the weather?

Answer. A temporary shanty would not be of any account there.

It would have to be snow-proof and tight. I would tighten it with whatever means I had there. There was no material, that I know of there, to have built a tight house. What might have been found, or what other people might have invented, or what might have been done in time, I don't know. I was not out of the house all the time when the propeller came in there. I was sick, but was out more or less. I was on board the Niagara during the winter. It was in the last half of January, as near as I could tell, that it froze up, so that you could go to the propeller with teams. I don't know but they could have built a shanty by that time to receive the goods. I don't recollect particularly what the conversation was between the captain of the propeller and Mr. Jones and myself. I don't recollect all nor anything in particular about it. It was about the vessel and goods. The weather was cold and freezing when the Plymouth went out; the wind in the northwest, blowing a fresh breeze on the lake, but not a gale of wind. I could not say how thick the ice was in the bay. I saw them walking over it while she lay there. I should think the bay was not frozen over when she went out—not all of it. I think a part of it was. The whole bay had not, I should think, been frozen over. I think there must have been less ice, when she went out, than there had been before, or she would not have been able to go out. I do not remember what day she left. I should think somewhere from two to four days after the Niagara came ashore. I don't know that Capt. Mallon and his crew lived anywhere, while at Presque Isle, except on the Niagara. They were back and forth to the Plymouth, but where they ate, I don't know. I got the bark out that I had, for such buildings as I wanted. I had a particular building in view when I got it out. I used a part of it. I wanted it for buildings for as many men as I could get to chop. If I could get more men, I should want to build more houses. I generally got my men up there before navigation closes. At the time (last fall) I was calculating to move the choppers I had to another place, and build another house for them to live in. The weather was such that I did not do it. I was at that time expecting to use anything, in that line, that I had, or that I could get. I don't know how much bark I had on hand. I did not build the house. I had houses in which they were living at the time. I presume the houses belonged to me. If they had made application to me at this time for this bark, I would not have let them have it, because I wanted to use it. In my circumstances then, I would not have sold the bark. I expected to be obliged to use it any way. I do not know whether I had more than I needed for my own use or not enough. I was intending to build a shanty large enough to accommodate nine or ten men—about eighteen feet by twenty. I could not tell how many cords it would take to cover such a shanty. I never measured it by the cord. I put on bark, two or three thicknesses, enough to keep out the water and snow. It depends on the quality of the bark, how much it requires.

Re-examined.

There is sometimes other bark used for covering houses than cedar bark. I don't think there was any bark there at that time, for there was none peeled; you could not get it off the trees. The timber there is of various kinds. At that time of the year you could not get off the bark whole. It comes off in little pieces. I think the bark peels from June till the last of August. About three months, I should think, it could not be peeled from the trees, so as to be suitable for roofs during the rest of the year. The bark is peeled from the bottom up as high as a man can reach and then cut round. It is then stacked up and weights are put on it so as to prevent it from coiling up in the sun. I know the house where W. R. Malison lives. It is in my possession. It was built before he saw it. I presume the wood-choppers, who lived two miles out in the woods, were included among the nineteen men, who, as he said, lived at Presque Isle. There are no teamsters with teams at Presque Isle. It is called nine miles from our place by land to False Presque Isle. Three families wintered there; no provisions were to be procured there, I suppose. Two of the men are fishermen and the other a farmer. I could not tell how much land is under cultivation. I think not more than three or four acres. The next house that you come to, on the way to Detroit, is at Thunder Bay River, 30 miles from Presque Isle. I think he could not furnish us with provisions. Fishermen are scattered all along the beach, at short intervals, in shanty-houses, to Saginaw; the nearest village is Cheboygan up the lake, which is sixty miles by lake and nearly twice that by land. In winter season you can get there by sleds along the beach. It has been travelled by horses and sleds. You could not have got supplies at Cheboygan last year; they had not enough for themselves. From Presque Isle to Saginaw, by water, is called one hundred and seventy miles; by land, it is not less than two hundred miles, I should think.

Cross-examined.

I came up here in the Niagara to Sheboygan (Wisconsin), and from there to this place in the Forest City.

F. BURNHAM.

Friday, June 8, 1855.

Frederick Burnham, recalled and further examined by libellants' counsel, says:—

Question. Have you, at any time, made to any person or persons statements in regard to the matters to which you have testified, differing from the statements you made on this examination?

Answer. Not that I recollect of; I think not. I have seen Mr. A. C. Jones, of Milwaukee.

Question. Did you ever have any conversation with him on the subject of the Niagara?

Answer. I have. He has asked me questions concerning her.

Question. Did you ever state to Mr. Jones that you thought the cargo of the Niagara might easily have been taken out and preserved at Presque Isle, and that there were plenty of facilities for preserving her cargo there, and that you thought it very strange that they did not do so, or anything in substance like that?

Answer. I said no such thing. I might have said that I thought it could have been taken out. Perhaps I did say so.

Question. Did you not tell him that a shanty or a house, in which the cargo could be preserved, might easily have been built; and did not you go and show him the materials out of which such a house might have been built?

Answer. I did not. I might have shown him trees in the woods. I took him to see some cedar timber; but I don't recollect telling him that a house might have been built by them.

Question. Do you know a party of surveyors at present camping near Presque Isle, or there?

Answer. I have seen them.

Question. Did not you make statements in substance such as I have asked you about, in presence of one or more of those engineers? or, of talking with one of them about it?

Answer. I do not recollect talking on the subject to, or in presence of any of them.

Question. Did not you state to Mr. Jones that the master of the Niagara might have had the bark you have spoken of to cover the shanty with? Did you not go to and show him the bark?

Answer. I don't recollect that I said anything to him about it, any more than, as we passed the bark, I said to him that there was a pile of bark. I did not go out of my way to show him the bark.

Question. Was the bark you showed Mr. Jones the same bark you referred to here in your examination the other day?

Answer. I say I did not show him any bark.

Question. Was the pile of bark Mr. Jones saw, the same you spoke of in your examination?

Answer. The same.

Question. You stated here the other day that you could not recollect what was said to you by the master and mate of the Niagara. Did you not repeat to Mr. A. C. Jones, this spring, in Presque Isle, what the master and mate said to you last fall when they were there? If you did, what did you say to Mr. Jones?

Answer. I don't recollect. The conversation I had with Mr. Jones I considered of no importance and don't recollect it.

Question. Why did you consider it of no importance?

Answer. I say not of importance that I would recollect it, or make any attempt to. I recollect his asking me some questions. I recollect but one question. He asked me if I would have taken the

job of getting the goods out of the propeller, or taking care of them, or something of that kind.

Question. What did you tell him?

Answer. I told him that I could not say anything about whether I would have done it or not at the time. I rather thought not, under the circumstances. I know John Ramsdell, the mate of the Grand Turk. He had charge of the vessel last winter.

Question. Did you ever make any statements to John Ramsdell contrary to what you have sworn to in this deposition?

Answer. I don't know that I have.

Question. Did you ever state to him that that cargo might easily have been taken on shore and preserved, and express to him your surprise that the crew went off and left it in that condition, or anything in substance like that?

Answer. I have no recollection of anything like that. I had a great deal of talk with him, but I don't recollect any such conversation.

Question. At whose solicitation did you come up here to be a witness in this case?

Answer. At that of Capt. Jones of the Niagara.

Question. Did you have any talk as to what you were going to testify to?

Answer. I did not.

Question. Do you mean to say you had no conversation with him as to what your testimony would be?

Answer. No more than that it was what I might know concerning the Niagara.

Question. How much did they pay you, or agree to pay you, for coming up here?

Answer. They have paid me nothing, no sum was specified which they were to pay me. They told me that Captain Anderson would do what was right. That is all they said.

Question. Was nothing said about the amount of compensation?

Answer. Nothing of the kind.

Question. Did not you tell them what you thought it would be worth, or something of the kind?

Answer. I don't know but I might, but there was no promise from them. I knew what Mr. A. C. Jones was at Presque Isle for, so far as he told me his business. I talked with him considerable, but not so much the last time as the first time. He was there twice. He wanted I should come up here as a witness.

Examined by Mr. Lynde.

I know Mr. Malison. His regular wages at Presque Isle are a dollar a day and board generally. He has been hired for that at home. It is a great damage to my business to be called away at this time.

Examined by Mr. Emmons.

I said just now that it would be a damage to Mr. Malison to come up here at this time. It would be a damage to him beyond the amount of day wages.

Examined by Mr. Lynde.

Mr. Malison ought to have been at home planting. The witness says, on hearing his examination read over to him, that he does not recollect saying to Mr. Jones what he was asked if he said to him. That he sometimes talks a good deal to get a man's opinion, but he don't recollect talking this way to Mr. Jones.

F. BURNHAM.

(*Deposition of John Nichols.*)

John Nichols, being duly sworn, testifies and deposes as follows:—

I have lived in Presque Isle for three years past, except three or four months, when I was absent. I was there when the Niagara went ashore last fall. It was some time in December, I believe. It was Sunday morning, about 9 or 10 o'clock, that I first saw her ashore. She was not there the day before. It was very cold weather that morning, and I believe it snowed a little, but I am not certain. It was blowing hard, but it had died down some when I saw her since the night before (Saturday night), when it blew very hard; as hard as I ever saw it. It snowed also. It blew pretty hard all night. I don't know exactly when the blow came on. It was some time the evening before. I think I saw her once a-day after she went ashore. I went aboard of her, either the first or second Sunday after the crew left her, and brought off two barrels of whiskey for Mr. Burnham. I helped take them off. I could not say certainly how far she lay from the road where it turns off. I should say it was a quarter of a mile. The beach between where the Niagara went ashore and the road, for a part of the way—I guess more than half the way—is wet and springy all the year round. The land off from the beach opposite where she lay is soft, very soft, marsh like. There are some few stones there which you can step on. If you miss the stone, your foot goes down. From the propeller to the dry land, as near as I could now come at it, is about eighty rods. I don't recollect whether the bay froze over the night after the Niagara went ashore. It froze over within a day or two. It froze over before the Plymouth left so that you could walk from the propeller to Burnham's house on the ice. It was may-be half a mile from the propeller to a house. I don't know exactly how far. I never saw a loaded team try to go through on the beach from where the propeller was to this wood road, a quarter of a mile off (the one laid down on the diagram marked A, hereto attached). When we went after the two barrels of whiskey, we could not get on the beach up to the propeller with a team. We

got to the edge of the soft place, I should think about forty rods from the propeller, or half way from her to the road. We got the barrels up to the beach in a yawl-boat, rolled them on a plank up on to the ice bank, and then rolled them along over the ice on a plank the whole way to the wagon. I don't know whether that ice was strong enough to bear a team all winter; I mean on the beach, where the wet springy place was. There was no timber, logs, or lumber at Presque Isle to make a shanty of, at that time, that I know of. I should have known of it, if there had been. There were trees enough standing in the woods. Mr. Burnham had a little bark there. I have seen it. I don't know whether he has used it. I don't know of any other bark or roofing materials there. I think I should have known it if there had been. All the men in and about Presque Isle, except the lighthouse keeper, were, I believe, in Mr. Burnham's employ. There are no lands cultivated about Presque Isle, except what Mr. Burnham cultivates. I have always seen the people there get their supplies of Mr. Burnham. Nobody else keeps any provisions for sale there. There was one old empty shop there last fall, a part of the roof was off. I don't know exactly the size of it. It was not very large. It may be 12 by 24, or somewheres along there. I can't say how large it was. There was no other place that I know of, where the cargo of the propeller could be stored, except what was occupied. That shop belonged to Mr. Burnham, I suppose. I don't know but he wanted to use it. There may be trees fit to build a house nearer than a mile, but I don't know of any. If a man had gone right at getting out timber, it would have taken a good while to have got it out. There is nothing impossible about getting out timber. If they had gone at getting timber out right after the propeller went ashore, I don't think they could have hauled any to amount to anything. There is one ox team in False Presque Isle—one yoke. I don't know of any other teams, except those owned by Mr. Burnham, nearer than Cheboygan. I don't know of any teams there. I never knew of a team coming through from Cheboygan to Presque Isle. Mr. Burnham has no ox teams. He had four span of horses at that time. The winter season is a busy season for those horses. In winter, Burnham hauls out wood with them. If he had not let those horses go, that house could not be built at all, any way that I know of. I don't think twenty men, with those horses, could have put up a building large enough to secure the cargo of that propeller in a good while. I can't guess how long. I don't think a span of horses could have hauled one log a day, the way the roads were then. I could not say whether they could or not. I don't know at what time they commenced hauling wood that winter. I took no notice. It was in January some time, I think. The bay froze up solid some time in the winter, so that a team could go across on the ice from the dock to the propeller. I don't know when it was. I don't know as it froze over in January, so as I would risk it with a team. I don't

think it did. The ice went out of the bay in April—in the latter part of April, I think.

Cross-examined.

When I say the dock, I mean the pier marked on the diagram "A" here. The ice froze over on the beach from the propeller around, about the same time that the bay froze over. There was an ice bank of anchor ice along the beach by the propeller which formed the same week that the Niagara went ashore. This ice bank was out a little from the beach in the shallow water of the bay. It does not form clear up to the shore, because the water at this marshy, springy place I have talked of, runs down on the beach and does not freeze until the snow covers it over. Between the shore and the ice bank there was a little space of clear water when I went down after the barrels. It was some time along in the middle of the winter that the bay froze over; I don't know exactly the time. The week after the crew left there the weather was moderate; not so cold as when they went ashore. Mr. Burnham cut wood to sell to steamboats and propellers; that is his business; he is in most every thing. He keeps those men and horses to chop and haul wood, which in the summer he sells to propellers and steamboats. I don't know where the whiskey came from that we got off from the boat. When I saw it, it sat at the forward gangway. I went aboard the propeller some time during the winter. I saw she was pretty full of freight. I saw a lot of chairs and a lot of sleighs. I believe there were some casks of crockery. I saw some wood on her deck—not a very large quantity. I did not notice particularly what she had on her decks. I was never a sailor; I have always followed farming, chopping, and driving team. I know there is a large lot of telegraph poles on the dock, and on the beach near the house. These poles were got out for the use of a telegraph company by Mr. Burnham; they were got out last fall; I don't know why they remain on his hands. I have heard him say how many there were—I don't know—not thirty thousand. There were enough to build a shanty—such a kind of one as they would build; some of them were about a foot thick at the butt, I guess; I never measured them. They were cut last fall back in the woods, and drawn in last fall. After the Niagara came there the roads were pretty bad, beaten down, and muddy. The road we hauled wood on was muddy. The road the telegraph poles were hauled in on was not so muddy. I don't know any good reason why the timber for a shanty could not have been hauled in on the same road that the poles were hauled in upon. I suppose there were poles enough there to build two or three shanties; it would depend on how large you wanted the shanties. The poles were about 25 feet long, I should judge; I don't know how many there were. They were piled on the end of the pier, on the place we kept clear usually to turn our teams round on. They were piled up there in November. I supposed they belonged to Mr. Burnham. They were

of cedar wood. I don't know how many shanties, 25 feet square, they would have built—several. There was quite a pile of them there—two piles—one on the beach. If I had commenced on the morning the Plymouth went away, I could have put up a shanty made of those telegraph poles in a short time if I had men (choppers) enough. Two men could handle a pole. I don't know of anything else but bark to cover the roof of a shanty with there. There are a good many evergreens there; I don't think evergreen boughs would keep out the rain or snow; I never saw a shanty thatched with green boughs. There was no lumber there, no boards that I know of except what he had to use for the bottom-boards of the wagons. The old shop was built of hewn logs; what roof there was on it was made of cedar bark. There are fir and balsam trees in large quantities there. There are axes, and saws, and tools of different kinds there. There is one carpenter there at work for Mr. Burnham. I was a few times on board the propeller. I was generally at work in the woods. There were three men left on board of the propeller; they called one a watchman, one a wheelsman, and one a porter. I don't know how they conducted themselves that winter; I was not round there to watch them; I have seen them drink a good many times. I used to go aboard and talk with them occasionally, and sit a little while. I don't know as they drank more freely than we did. I saw the master of the propeller, Captain Mallon, and the mate, Mr. Jones. I heard them talk about this matter, but not much. I did not hear them say how the cargo was stowed, or why they did not take the cargo out. Burnham was complaining some of being sick at that time; I don't know what was the matter with him; he was out some. I did not hear the master and mate say anything about taking the cargo out, that I recollect. There was an old barn full of hay and oats there, and another unoccupied house, with the roof off; it is made of logs; I don't know how large it was; I should not think it was fifteen feet square; I suppose a wood-chopper first lived in it. The roof was of cedar bark, pitching both ways; but it was off. There was a stable where the horses were. I would not work for those two or three days on the beach when the propeller first came ashore. It was so cold that I don't believe I could stand it. I would have done what I could to help them. I worked out doors after the propeller went away, and as the weather then was, I would have worked in helping build the shanty, or aiding them otherwise, for pay, as soon as at anything else.

JOHN NICHOLS.

(*Deposition of George W. Gibson.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel, and Furniture, ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM W. ABELL, JOHN ALLEN, Jr., HUGH ALLEN, and FRANKLIN LEE, Respondents. JOHN J. TALLMADGE, Claimant.

Depositions taken on the part of the respondents by consent of parties before James Sheldon, a commissioner of the United States Courts, duly appointed, &c. to take depositions at his office in the city of Buffalo, in the Northern District of New York, the twentieth day of June, 1855, and other days named in the said depositions, at which first named time and place appeared Mr. Newhall, of counsel for the libellants, and S. G. Haven, Esq., counsel for the respondents, and the witness, George W. Gibson, being duly sworn, says: I reside at North Ridgeville, Lorain County, Ohio. I am a mariner, and am now master of the propeller Plymouth. I have been a mariner twenty-one years, or thereabouts. I have been a mariner twelve years upon the lakes, and the rest of the time upon the ocean. While I have been upon the lakes, I have been a master of sail vessels or propellers ever since the year 1847. In 1847 I was master of a schooner; in 1848 I was mate of a propeller; and ever since that year I have been a master of a propeller. I sailed the propeller Plymouth last fall. I know the propeller Niagara. I remember the occasion of the disaster to her at Presque Isle. It was on the morning of the third of December, 1854, about two or three o'clock in the morning. At that time I was laying with my propeller, the Plymouth, alongside of the dock at Presque Isle. I was on the southwest side of the dock; that was the leeward side as the wind then was. When I went into the harbor it was calm, and a heavy sea from the northeast rolling in. I went in for wood. In the first place, the barometer was very low, and I decided on laying there that night to see how the weather would turn out. It commenced blowing there, I should think, about midnight; but I am not certain as to the exact time. It commenced very hard and very sudden, a perfect gale all at once, and blew somewheres from east to northeast; probably east-northeast would be about the true point from which it blew. The wind carried away all our lines, except one at each end of the boat, and placed us in imminent danger of going on to the beach before we could get other fastenings out. While we were in the act of getting the lines out, I saw a propeller outside. We had been working, and worked some hours to get our fastenings out. I

think it was between two and three o'clock when I first saw the propeller outside making for the harbor. There was a tremendous sea rolling in at this time. The propeller got in, and let go an anchor right off the end of the dock, I should judge. The anchor did not hold, so she dragged right on shore; I mean she dragged her anchor and went on shore. I did not go on board of her. She lay next morning at daylight broadside to the shore. When she came in I could only see her lights, and knew it was a propeller by her sparks. When she came in the weather was very bad. I had all I could do to hang on to the dock. The propeller came in and dropped her anchor off the end of the dock, which place was considered the best holding ground. The dock runs from the shore off into the lake in a northwesterly direction, and is about 250 feet long from the shore to the end of it. I mean that boats can lay alongside of the dock for about 250 feet, but the dock is twice that length to the shore as near as I can judge, shoal water and all. The sea was so heavy that we struck every few minutes during all that night and during the next day. Our head was in shore, and it was the bow that thumped. It snowed in squalls that night and the next morning; they would last a few minutes, then clear up, and then another snow squall would come in a few minutes. I continued to lay there until the morning of the 6th of December. It blew until the 5th a continual gale, and I lay there on account of the gale, and on account of getting froze up. The gale continued until the morning of the 5th December, but it veered around to the north. After the gale stopped, the ice made so fast that I got froze up completely, and could not move. I got away on the morning of the 6th, at half-past nine, after cutting the ice clear of the wheel and the boat. I got to St. Clair River at China, it is called. I went further down to Algonac, and went back on account of the St. Clair Flats being froze up. I went back to China, and paid off my crew, and laid up. I went into St. Clair River on the 7th December, and was stopped on that day by the ice. Some of my crew walked on the ice from my propeller to the Niagara, where she lay. I do not know how thick it was, but I was on the ice myself. There was some snow on the ground and ice before I left Presque Isle; not a very great deal; I could not say how much there was; it was what came in the squalls, and it snowed every day during the storm. During the time I lay there the weather was excessively cold. During the time I was there the Niagara continued in the same place where she went ashore, as I have stated. She looked to be about ten or twelve rods from the solid shore—I mean from the beach. I did not go there, and only judge from seeing her from my boat. The distance where she lay was about a mile from my boat as near as I could judge. I had a chain fastened to the dock, and all my lines that I could possibly get out, it blew so hard. I knew the master of the propeller Niagara, it was Captain Mallon; I had been acquainted with him for some time.

Question. What could have been done there to have saved the cargo of the Niagara under the circumstances that you saw?

Answer. The only answer that I could make to that is, that Captain Mallon and myself consulted about it. There could not anything have been done to my knowledge more than to leave the goods on board and take care of them, and prevent their being stolen.

Question. Did Captain Mallon come and consult with you in reference to it?

[The libellants' counsel interposes several objections to the question.]

Answer. He did.

Question. Did you advise him in reference to it? and if so, what advice did you give?

[Objected to as above.]

Answer. I advised him to leave the goods where they were, and leave some ship-keeper on board of the boat, and go home.

Question. Were there any means of storing the cargo?

Answer. Not to my knowledge.

Question. Supposing the heavy articles of her cargo, which were in the hold, had been elevated upon the deck, what effect would it have had in regard to the vessel's maintaining her position, or tipping or careening over?

[Objected to as above.]

Answer. It would have made no difference, as she was full of water. I do not know whether there was room on deck to put the cargo on. In my opinion it was impossible for the Niagara to have been got off and taken away to any port last fall after the accident, as the navigation was closed below. She was all froze in where she lay, and navigation was closed so that means could not have been got up to her. I do not mean to say that means could not have been got down from Mackinaw, but I do not see any means of getting her off last fall. I have known Capt. Mallon, as a seaman, seven years. I have never sailed with him. I cannot very well state as to his judgment and abilities. I have not the means of stating in regard to his qualifications as a sailor. Three men were left on board of the Niagara in charge of her. I brought Capt. Mallon and his crew down to China on my propeller. Three of the crew were left on the Niagara.

Question. Had you any means to tender to Captain Mallon, either to rescue the Niagara or protect the goods?

Answer. I had not any. He and I had no talk on that subject. He knew very well that I could not render him any assistance.

[The last portion of the answer is taken under objection on the part of the libellant.]

Question. State why you could not render him any assistance.

Answer. We were full of freight throughout, and were drawing twelve feet of water aft, and therefore could not get near him. I know the Niagara had two anchors, but I do not know the weight of them.

Question. What, in your judgment, was the cause of that disaster to the Niagara, the going ashore and getting in the condition in which she was when you left Presque Isle?

[Objected to on the ground that the witness had no knowledge of the circumstances of the disaster otherwise than from information.]

Answer. I do not know of any other answer than "Providence," it was the storm.

Question. In your judgment would your anchors have held your boat if you had come in in that storm and dropped them as the Niagara did hers?

Answer. They would have held her if they had happened to get hold. A boat coming in in such a storm, and drifting off so fast, it is difficult for the anchors to get hold.

Question. Could anything have been done other than casting anchor to prevent her getting ashore that you know of?

Answer. Nothing that I know of. If she had gone on the weather side of the dock, which was the other side of the dock that I lay on, she would have stove herself all to pieces.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined by Mr. Newhall, the witness says:—

I did not go to the propeller Niagara myself, I was across the bay from her, which was a distance of about a mile across the bay. It was about a mile and a half around the bay, I should think. I do not know how her cargo was stowed. I do not know the kind or value of her cargo. I only know it was a cargo of merchandise. I do not know how much water she had in her hold, nor how much water she lay in, except from information from the captain and mate of the Niagara. She was, probably, a mile out of the harbor when I first saw her. In a direct line it is about a half a mile from the mouth of the harbor to the pier, but in getting to the pier, to avoid shoals, we have to go around at least two miles from the mouth of the harbor. The propeller was in the harbor off the end of the dock or pier when she let go her anchor. I heard her chain running around the windlass. She was then about a half a mile from the end of the pier. That was about half an hour after I first saw her. She did not come right in. She had broached to near the mouth of the harbor. From the time she let go her anchor it was not over five or ten minutes before she struck the shore or bottom. The way I knew she had two anchors was, that after she went ashore I saw one anchor on her bow and I had heard one go over, as I stated, off the end of the pier. I had not my anchor out while I lay at the pier. I had two chains on board, and but one of them out on the pier. The Niagara first touched

the bottom near where she remained; one end of her struck first, and then she swung off and went broadside on. It was a little over three days between the time the Niagara went ashore and the time I left there with her crew. I judge of the amount of snow there when I left, by the amount on our deck, there was less than a foot. It was fine weather the day I left, but it came on to blow that day again. The storm that blew when the Niagara went ashore abated on the night of the 4th and morning of the 5th December. The 5th of December the day was very cold; the storm had abated, but the sea was heavy, and we were froze in. It was so cold that it froze in ripples. I got down to the flats on the 7th December, and back to China the 10th December, and paid off my men the 12th December. Captain Mallon did not ask me for any men. I first saw Captain Mallon on the morning of the 3d of December. I did not see any effort made to take out that cargo while I was there. Captain Mallon told me there was five feet of water in the hold. While I was there I did not hear any conversation between Captain Mallon and his mate, or any difference of opinion. They did not come to me for any means of aid. I was bound from Chicago to Buffalo with a cargo of oats, flour, pork, and general produce. I let the crew of the Niagara have provisions. I left provisions for the ship-keepers on the Niagara to use during the winter.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being re-examined by Mr. Havens, the witness testified:—

The Niagara, in coming into the mouth of the harbor of Presque Isle, broached to, as I have stated. If she had not been well managed, she would have gone on to the rocks outside; that detained her, which increased the time of her coming in, and detained her a quarter of an hour at least.

Question. Was there any use to which Captain Mallon could have applied your men to the advantage of the vessel or cargo, provided he had had them?

[Objected to generally, as above.]

Answer. No use that I know of. Where the Niagara went on shore there is no place of any account, nor any settlement nearer than Mackinaw, of any account.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again cross-examined, the witness said:—

The mouth of the harbor is about a quarter of a mile wide. After you get in, the bay is most a circle of three miles in diameter. The crew of the Grand Turk was there when I was there. I brought them down. The propellers Republic and Kentucky came in while I was there, and I left them there. I heard no inquiries made by the captain or crew of the Niagara for assistance about the propeller while I was there.

Question. Can you state that your men would have been of no aid about the propeller without knowing the character of her cargo, the mode of the stowage of the cargo, and without a knowledge of the position of the propeller ashore; or would the fact whether the men could or could not be of aid, depend in some degree upon the character of the cargo, its stowage, and other circumstances, and if so, in what manner?

Answer. I do not know how to answer the question. In the first place, I would not have let them have my men, because my own vessel was in danger. If they were going to remove the cargo, men would be of use in getting it ashore; but they would not be of use in any other way that I can see.

Question. Would not the fact whether the men could be of use, depend in some degree upon the mode of the stowage of the cargo on the propeller?

Answer. The men would be of use, providing they were going to transfer the cargo from the boat; but I know of no other way. It was so frozen that I could walk from my propeller to the shore. This was on the 5th of December, and on that day it was so frozen that they could walk from the Niagara to the shore.

Question. Would not the fact whether your men would have been of aid to the Niagara or her cargo, depend in some degree upon the depth of water in the hold, and the fact whether the cargo exposed to the water would be injured by it?

Answer. If the deck was clear, then the men would be of aid to transfer the cargo from the hold to the deck, or to change it around.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again examined by Mr. Haven, the witness said:—

Question. If she had a full cargo, and changed the position of the articles, would they not have to put some of the cargo in the place where the other was taken from?

Answer. Yes, sir.

Question. Is it generally practicable, where there is a full cargo, to take goods out from the hold and put them on deck?

Answer. It is impossible, unless you put some ashore. I mean on a propeller, and when she has a full cargo.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again cross-examined, the witness said:—

In a change of position of parts of the cargo, a box of dry goods might be taken out, and a hogshead of molasses put in its place, and so change places.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again re-examined, the witness says: That could not be done without removing some of the cargo from the vessel.

G. H. GIBSON.

Sworn to and subscribed before me, this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of James Drake.*)

And the said witness, James Drake, being duly sworn, says: I reside in Buffalo. I am a mariner, and follow the lakes. I have been a mariner since I was 14½ years old. I am now about 31 years. This is the fifth year I have been on the lakes, the prior part of the time I sailed on the ocean. I was on the propeller Plymouth, last year, the whole year; and when she laid up, and during the winter, I was her chief mate. I was on board the Plymouth at the time the propeller Niagara stranded at Presque Isle last fall. I cannot tell exactly the time. I did not keep a log last summer. It was, I think, between 12 and 1 o'clock at night, as near as I can remember, when she came into Presque Isle. It was in December, and our last trip down. We did not get down. The weather that night was pretty hard. It snowed and blowed, and was about as hard a night as ever I put in, either on the lakes or on the ocean. The first I saw of the Niagara that night was seeing her come round the point. I saw the sparks from her smoke-pipe, and knew there was a propeller coming in. I only had a look at her now and then, I was so busy; it took us all the whole night to make our own boat fast. When I saw her

coming in, I did not believe she would ever get anywhere, it blew so hard at the time. It blew almost a hurricane, so you could not look over the rail. The Plymouth was laying on the leeward side of the dock, with the larboard side to the dock.

When I saw the Plymouth coming in, I was making the Plymouth fast, and we were all busy with all the ropes we had making her fast. After I first saw her, I went two or three times to try and see and looked over our stern, the wind blowing hard from the northeast, with a heavy sea. I saw her each time I looked, and I saw there was no possibility of her keeping off the shore. Her engine was kept constantly going when I saw her. I saw sparks coming out of her smoke-pipe. I did not see them drop her anchor, and if they had, I could not have seen them do it. The Niagara went ashore that night, and the place was about a mile across the bay to the leeward of us. I do not know exactly about what depth of water she went ashore in. I did not go on board of her at all. We remained at Presque Isle some days, but I cannot say how many. The morning after the Niagara went ashore, her captain and mate, and I believe the engineer, came on board our propeller. I do not know what they came for; I was aft making our boat fast, myself and all hands, and we had been up doing so all night.

Question. What took place then between them and Captain Gibson?

[A general objection taken to this question, and the testimony called for by it, and also on the ground of irrelevancy and incompetency.]

Answer. I do not know what took place, but Captain Mallon of the Niagara, said to Captain Gibson, after Captain Gibson asked him if the Niagara was making any water, that there was four or five feet of water in her hold. I believe this was what he said, but as near as I can remember, it was either four or five feet of water in her hold. Captain Gibson I believe, said that it was too bad. There was no further consultation in my presence between them.

Question. Do you know of anything that could have been done that would have prevented the Niagara going ashore that night?

[Objected to generally.]

Answer. I do not. I believe captain Mallon did the same as I would have done, all in his power to keep his boat from going ashore.

Question. Was there any way or means that were practicable for saving the cargo which was on board of the Niagara, after she went on shore?

[Several objections on the ground that the witness has no knowledge of the circumstances attending the disaster, or the condition of her cargo.]

Answer. As far as I understand or believe to be, it was better for it to remain where it was on board, than to be put ashore where there was neither lumber nor anything to make a shed to cover it.

Question. What was the weather from the time the Niagara went ashore until the time you came away?

Answer. It was that bad that I could not tell you anything about

it. It was so severe, it blew. I speak of the night she went ashore, and after that the next night we froze in solid, and some of our men walked right across the bay from our boat to the Niagara. The wind still blew fresh, and a heavy sea running from the northeast. We got out by taking axes and chopped all around our boat. I believe we chopped about all around her, and chopped the propeller wheel clear. We chopped all around one side and part of the other. We shipped the wheel chains from below up on the main deck, so that if it froze we could keep them clear. Next day we got out; I believe it was the next day, I am not sure. We were bound from Chicago to Buffalo. We got down to St. Clair Flats and could not get over on account of the ice, and then went back to China, and laid up for the winter. After we left Presque Isle, it blew a whole gale of wind, and was cold. We brought the crew of the Grand Turk and propeller Niagara from Presque Isle down to China, and landed them there. We left some of the Niagara's crew, I believe three, at Presque Isle to take charge of the Niagara, and we left them provisions, flour and pork. There was no means to get away from Presque Isle, except for the men to foot it to Saginaw, after the navigation closed. When we were frozen in at Presque Isle, we all expected to have to foot it to Saginaw on the beach.

JAMES DRAKE.

Sworn to and subscribed before me this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined the witness says:—

When we went into Presque Isle, it did not blow very hard, but it was snowing. The day before we left it was more moderate, but blew fresh. I cannot exactly remember how it was the day before that, but believe that was the day we chopped her out. I looked at the Niagara when she was coming in every chance I got. In such a gale as that, I could not have heard her anchor when it was thrown out, or her chains. We were there two or three days, any way. We went into Presque Isle, and went to the windward side of the dock and took on some cords of wood, and there was a heavy swell coming from the northeast, and I asked captain Gibson if he was going out, and he said no, that he would wait until it would clear off. We then changed to the leeward side of the dock, where there was more water, and on that account; as soon as we made her fast as well as we do for general, I went and turned in, and left word to be called. We changed sides betwixt 8 o'clock and 12 o'clock at night, but I am not sure of the time. I then went and retired a long time, and came back before the Niagara came in. We did not have an anchor out, but we got out all our ropes and our bow chains, and it took us until morning. The captain, mate, and engineer of the Niagara, came

on board the next morning. They stopped with us one night, thinking we would get out, and the rest of the time they stayed on board of the Niagara. I believe when captain Mallon came there that he said that there was the same depth of water outside of the propeller as in her. I did not go on board of her, nor did I see her cargo. I do not know what it was, or its value. I do not know how it was stowed, or what condition it was in. I do not know how deep water she was in.

Question. Did you hear any dispute or difference of opinion between captain Mallon and the mate of the Niagara, regarding the Niagara or her cargo while you were at Presque Isle?

The witness says that he declines answering the question.

Question. Did you hear any dispute between the master and mate of the Niagara about the Niagara and her cargo, or any loud talk or difference of opinion about them?

Answer. I did not hear any.

Question. Why did you refuse to answer the last question?

Answer. I refuse to answer when I do not think proper.

Question. Did you see any attempt made to get men or means to aid about the Niagara or her cargo?

Answer. No, sir; I was too busy to attend to their business. Our cargo was oats in the hold, pork, flour, fish, beef, and butter. We left what they wanted for the ship-keepers of the Niagara, all they asked for.

JAMES DRAKE.

Sworn to and subscribed before me this 20th day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of Samuel Smyth.*)

And the said Samuel Smyth being duly sworn, says: I am a sailor, and have been a sailor for four seasons. I am the mate of the propeller Plymouth. I am second mate; I was a wheelsman on her last year. I remember the occasion of her being at Presque Isle when the Niagara went ashore. It was in December last year, but I cannot tell the day of the month. The Plymouth was made fast to the dock at Presque Isle when the Niagara went ashore. She was made fast on the leeward side of the dock. The Plymouth was there in consequence of a storm. She had been in there some four or five hours, to the best of my knowledge, when the Niagara was driven in. The Plymouth went in on account of the necessity of the storm. We took in wood there; we wooded on the same side, the leeward side of the dock. We wooded after the storm ceased. I do not remember that we wooded before the storm. I was on the deck of the Plymouth when the Niagara went ashore. I saw her when

she came in and when she stranded. The occasion of her stranding was that she was driven in by the storm, and it was a great miracle that she got in on account of the weighty sea that was outside, and they put out the anchor and it did not hold, and the wind was so severe that it blew her ashore.

Question. Was there not any way of preventing it?

Answer. No, sir.

Question. Could she not come up and fasten to the wharf or pier?

Answer. No, sir.

Question. Why?

Answer. When the anchor would not hold, she could not help herself, and the wind blew her aground on the beach.

Question. Tell what kind of a storm that was.

Answer. It was a regular storm—the greatest gale I ever was in on the lakes. The storm continued about 24 hours, to the best of my knowledge. It snowed, and fog all the time. The Plymouth remained there two days and two nights; that is as near as I can count. We remained there on account of the storm. We were froze in solid in one night, so that the vessel would not move, and I travelled across to the Niagara. I cannot say how thick it was. I went on board of the Niagara after she went ashore, and after the ice froze.

Question. In what condition did you find things there?

The Niagara was under water. The hold was full of water. The deck load was all safe and dry. I was on board of her about an hour and a half, to the best of my knowledge. I was on her twice.

Question. Was there any way or means of getting the Niagara off that fall?

Answer. No way or means, on account of being a desert island, and no means at hand.

Question. Could you not have come down below somewhere, and got means and gone back?

Answer. No, sir.

Question. Why?

Answer. The ice made so fast. I came down on the Plymouth. She was not enabled to get through to Detroit, and lay at St. Clair all winter. The place is called China, on the St. Clair River. She came through as soon as she could this spring, some time in April. I was on shore at Presque Isle after the Niagara stranded.

Question. Was there not any means of storing or protecting the cargo of the Niagara on shore?

Answer. There were no stores there, and no lumber to make any.

Question. What, in your judgment, was the best way of saving and protecting the cargo of the Niagara?

Answer. There was no way.

Question. Where was the greatest security for them, on board of the propeller or on shore, after she stranded?

Answer. On board of the propeller.

Question. Do you know whether there was any consultation between the captain of the Niagara and others, in regard to the best means of saving and protecting the cargo?

Answer. I do not. I remember Captain Mallon coming on board of the Plymouth before we left, and returning to the Niagara.

Question. Did you hear anything said or intimated, by any person, before you left Presque Isle, that the best and safest mode of securing the cargo was other than keeping it aboard the Niagara?

[A general objection is taken to this question.]

Answer. No, sir.

SAMUEL SMYTH.

Sworn to and subscribed before me, June 21st, 1855.

JAMES SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined, the witness said:—

The Niagara, when she came in, came within about half a mile of us as we lay at the pier. We were not out in the storm at all with the Plymouth. I am not aware that the Plymouth changed sides at the pier or dock while we were there. The Niagara came in—I cannot exactly say the time, but think it was about midnight. I was off at the time on the Plymouth, and making lines fast. I do not recollect the day I first went over to the Niagara. I went over first the day after she went ashore. I went over the second time that same evening. I was not there on different days. I did not go over on any other day. Captain Mallon was over to the Plymouth once when I was there. The deck hands and fireman of the Niagara came over after the storm ceased. They came over the day after the Niagara went ashore. I know Mr. Burnham. I did not see them at his store. They were doing nothing. Some of them remained over night on the Plymouth. This was the night after they came ashore. I came over from the Niagara with them. I could not say how many of them stopped there. Some firemen stopped there. I cannot say how many deck hands they had on the Niagara. I should think about six. There were four or five came over with me, and they stopped over night. We came over in the yawl-boat. The storm had ceased then. That was the evening after she went ashore. They came down in the Plymouth, and remained on board of her until we left Presque Isle. Captain Mallon and the mate and wheelsman remained on board of the Niagara the night we left her, as I have stated. I did not look under the Niagara's deck when I was on her. I looked around her, and I saw her deck cargo. I saw molasses between decks; I cannot say how much I saw there; and I saw some casks of sugar and some wagons—I cannot say how many. I saw some. I did see some barrels.

Question. Did you see any barrels there?

Answer. Yes, sir.

Question. Did you see fifty barrels?

Answer. To the best of my knowledge, I saw fifty.

Question. Did you see any more than that number?

Answer. No, sir.

Question. Do you know the contents of them?

Answer. No, sir. They were all over the deck between the decks; the wagons were aft and between decks.

Question. How many wagons were there?

Answer. I cannot say.

Question. How much of the deck did they cover?

Answer. I cannot say; I did not particularly look.

Question. What else did you see between decks?

Answer. Dry goods, boxes, pipes, &c. I do not know how many there were there. I know Captain Mallon. I talked to him. I did not sound the water there in the Niagara. I walked ashore from the Niagara on the ice. I went there first in the morning; some of the rest of the crew went with me the first time—two of them. The second time two or three of them went with me. When I first went there, they were not doing anything on the Niagara. The second time they were doing nothing. I did not pump there, and no one did while I was there. When I went there, all the crew of the Niagara were on board. I remained there about an hour or an hour and a half the first time I went. When I returned to the Plymouth after my first visit to the Niagara, some of the crew went with me. They went with me to the Plymouth. They did not go to any other place with me. They remained on board the Plymouth until we left. I did not see any people belonging to the island going to and fro from the Niagara. The crew of the Grand Turk were on the island. They stopped at a hut belonging to Burnham. It was simply a hut for shelter on the island. I went there twice. I went there the first and second days after the Niagara went ashore. I saw the crew of the Grand Turk there. Some of the Niagara's men with me. Two or three of the Plymouth's men were there. Two or three of the Niagara's men were there. I did not see Captain Mallon there.

How long did you remain there each time?

Answer. Between half an hour and an hour each time.

Question. Did you see some of the residents on the Island there?

Answer. No, sir.

Question. Do you know Mr. Jones, the mate of the Niagara, and did you see him at Presque Isle?

Answer. I know him when I see him, and I saw him there.

Question. Did you hear any dispute or loud words between Mr. Jones and Captain Mallon, while you was there?

Answer. No, sir.

Question. How dark was the night when the Niagara came in?

Answer. It was so dark that I could not see two rods ahead, to the best of my knowledge.

Question. What kind of a fog was there which you have spoken of in your direct examination?

Answer. Snow and fog together.

Question. How do you know about their throwing out their anchor?

Answer. From what they told me.

Question. How do you know what they did on board of the Niagara when she came into harbor, and before they went ashore? Do you know it by what they told you?

Answer. Yes, sir. I saw nothing that was done on board.

Question. Did they ask you, or any one else, while you were at the island, that you heard, to do any work on board of the Niagara?

Answer. No, sir, not that I heard.

Question. Did you see them looking about for any aid or help, or any means to help them while you were there?

Answer. No, sir.

Question. What did the crew of the Niagara do while they were there?

Answer. I do not know; nothing that I know of. I do not know anything about the value of the cargo of the Niagara, or the way in which it was stowed.

Question. How deep was she in the water?

Answer. Eight or nine feet.

Question. Can you tell how near the deck the water came on the outside, or about how near?

Answer. To the best of my knowledge, four or five feet.

Question. How deep was the water in the hold?

Answer. I cannot say.

Question. Did you hear Captain say?

Answer. No, sir. I mean as I stood on the main deck, and looked over the side, the water seemed to come within four or five feet of that deck.

Question. May it not have come nearer?

Answer. I think it was four or five feet.

Question. Was she working at all to and fro? Working?

Answer. Yes, sir. She moved but very little. She worked both times that I was there.

Question. What was the bottom she was upon?

Answer. It was a gravel or sandy bottom, and large stones.

Question. Did you see the master or any of the crew of the Niagara looking about for any logs, trees or pumps, or bark, or other material, while you was there?

Answer. No, sir.

Question. Did you hear them inquire for any?

Answer. No, sir; there was none to be had.

Question. Did you look round for any?

Answer. No, sir.

Question. How do you know there was none to be had?

Answer. By what the residents of the island told me. I was on the pier when they told me so. They told me so the day before we left.

Question. How long would it have taken you, with some men to help you, to run those wagons on the ice ashore?

Answer. I could not say how long; about a day.

Question. How many men would you have wanted to aid you; and how long would it have taken to put each wagon ashore with five men to aid you?

Answer. I do not know how many wagons there were. It would have taken half an hour for each wagon, with five men to help me.

Question. Would you have dragged them on the ice?

Answer. Yes, sir.

Question. How long would it have taken you, with the same men, to have rolled a barrel of molasses ashore?

Answer. I could not say. About an hour. It would have taken, perhaps, half of that time to put one of the smaller barrels ashore. I saw trees standing on the island.

Question. What time during the day succeeding the day when the Niagara went ashore, was it that the storm abated in the way you have before testified?

Answer. About night.

[The proctor for the libellant objects to the testimony of the witness on his main examination, relative to the throwing out of the anchor, and the other acts on board of the Niagara, at the time of her disaster, and also relative to the stores, lumber, and other means on the island, because the same are shown on the cross-examination of the witness, to be on information only. Also to the opinions of the witness, founded on the same.]

SAMUEL SMYTH.

Sworn to and subscribed before me, this 21st day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again examined by the respondents' counsel, the witness testified:—

Question. You have stated that the storm which stranded the Niagara ceased about night of the succeeding day. Did the ice make so that you walked upon it before the storm ceased?

Answer. Yes, sir; the wind hauled around more off the land so that the ice made.

Question. How did the weather continue until you left?

Answer. It continued storming and freezing. I have been into Presque Isle harbor often and have been ashore there often.

Question. Have you ever seen lumber and material there for building a shed or warehouse?

Answer. No, sir.

Question. Did the ice make clear to the land, or was it springy or open near the shore?

Answer. It made clear to the land.

Question. Did you notice either time when you was on board of the Niagara after she stranded whether her anchor was then out?

Answer. Her anchor was out; she had slipped her anchor. It was not made fast to her. I mean that the anchor and chain were overboard.

SAMUEL SMYTH.

Sworn to and subscribed before me, this 21st day of June, 1855.

JAMES SHELDON,
United States Commissioner for the Northern District of New York.

Being again cross-examined, the witness says:—

This is my fourth season upon the lakes. I was then wheelsman on the Plymouth, and I have been a wheelsman all the time on the lakes but a few months of the time.

Question. Have you ever had any experience in building sheds or warehouses?

Answer. No, sir.

SAMUEL SMYTH.

Sworn to and subscribed before me this 21st day of June, 1855.

JAMES SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of Robert Montgomery.*)

And the said witness, Robert Montgomery, being duly sworn, says:—

I am in the exchange business at present. I have been on the lakes since the spring of 1837 until this spring. I have been before the mast. I have been a captain since 1842 of sail vessels, propellers, and steamers. I know the propeller Niagara. I know Hugh Mallon, who was master of her last year, and I have known him for the last ten or twelve years in the capacity of a master. I never knew him in any other capacity.

Question. State his qualifications as a seaman and master.

Answer. I consider him a competent man to take charge of a vessel or propeller.

Question. I wish you would speak briefly of his judgment, carefulness, vigilance, and skill as a master, that we may have your opinion of it?

Answer. During the time I have been acquainted with him, for

two seasons we run in the Cleveland trade together, and his opinion I always laid great weight upon, and his judgment of the weather, and considered him a competent and good man. I always thought him a careful man and always knew him to be so. I have known the Niagara ever since she came out. I think she came out in the year 1849.

Question. Can you tell us anything as to her condition and appointments and equipage last fall?

Answer. I cannot. I knew Mr. Jones, her mate, Mr. Robert Jones. He was first mate of her last fall. I consider him a good man. His qualifications as a seaman, I should think, were good in the capacity of a mate or master.

Question. Do you know anything of the big anchor that the Niagara had on last fall?

Answer. No, sir.

Question. Have you been informed about its weight?

[Objected to as incompetent.]

Answer. Yes, sir.

Question. What was its weight?

Answer. All I know was I saw it marked on the card. I was informed that its weight was 1372 pounds.

Question. What do you say as to that being a proper anchor for the large anchor on the Niagara?

Answer. It was amply large. It was larger than the large anchor I got for propeller Toledo, which is a larger vessel, and registers 575 tons.

Question. What would you say as to the fitness of a chain for that anchor of 75 fathoms in length and weighing 56 pounds to the fathom, and making a gross of 4200 pounds?

Answer. I should think the chain was sufficiently large.

Question. State your opinion whether such a propeller as the Niagara with such an anchor and such a chain would be considered well equipped in that particular.

Answer. I consider that it would be.

R. MONTGOMERY.

Sworn to and subscribed before me this 21st day of June, 1855.

JAMES SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined, the witness said:—

I have been master of a propeller from the spring of the year 1848 down to the last spring. I am not acquainted particularly with the weight of the anchors and chains of the different propellers on the lakes. I know about what a propeller should have. I have never compared the weight of the anchors and chains on the

different propellers. I was building a propeller winter before last, and had occasion to inquire for the first time as to the proper weight and size of anchors and chains. I built the propeller Toledo. I inquired as to the weight of anchors and chains that ought to be in propellers of her class. I speak from information that I got upon that inquiry. I know by my own experience what weight an anchor and chain ought to be for a vessel of a certain tonnage. I have never made inquiries as to the weight of anchors and chains upon propellers in other ports besides this. I have had no occasion to. I saw the anchors and chains on the bow of the Niagara since she was built. I do not know that I did last fall. I have never examined them. There are different ways of making anchors; but all the anchors upon propellers are about the same kind, are about alike, except as to weight.

R. MONTGOMERY.

Sworn to and subscribed before me, this 21st day of June, 1855.

JAMES SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of George Davis.*)

And the witness, George Davis, being duly sworn, says:—

I am in the insurance and forwarding and commission business at Buffalo. I have been in the insurance business 6 or 7 years last past, and in the forwarding and commission business the last 18 years. My forwarding and commission business extends upon the lakes. I have known Capt. Hugh Mallon eight years in the capacity of master of sail vessels principally. I do not recollect of his taking charge of a steam vessel before he took charge of the Niagara.

Question. What are his qualifications as a master of a vessel.

Answer. I have never heard them questioned but what they were good. Judging of the character of the man I should say he was a careful, prudent man, and worthy of being entrusted with property. He is not a man of as much force of character as some men, but I think he is a good ship-master. I have shipped goods on vessels that he commanded, and transacted business with him as a master. I know the propeller Niagara. I have insured and underwrote upon her.

Question. How lately have you underwritten upon her?

[Obected to as irrelevant.]

Answer. I underwrote upon her last year.

Question. What was her condition last fall as a staunch and seaworthy vessel, or otherwise?

Answer. It was good as far as my knowledge extends. I did not examine her personally, and only saw her as I saw any vessel every few days. She is a vessel in which I have been an owner, and

underwritten upon her ever since she first came out. I knew as much about her as any one who did not go on board of her and examine her minutely. I am not an owner in her now, and was not last fall.

GEO. DAVIS.

Sworn to and subscribed before me June 21, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined the witness said:—

I have known Captain Mallon seven or eight years. I do not know when he first went on board of the Niagara as master. I have no recollection of his being a master of a propeller before last fall.

Question. Have you ever heard anything positively good of him, or high merit as a master of a propeller?

Answer. I cannot say as I have.

Question. Then, has what you have heard said of him, been spoken of him in regard to his being master of a propeller or of a vessel?

Answer. Of neither particularly, but generally as a master. I now recollect of his having been master of the steamboat Hudson two years ago. I did not make an examination of the Niagara last fall, and I could not state anything specific as to her equipments.

Question. From your knowledge of Captain Mallon, do you not think he would show better qualifications in cases of ordinary navigation than in a case of emergency requiring a high degree of activity?

Answer. I think he would. I ceased to be an owner in the Niagara in 1851.

GEO. DAVIS.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again examined by respondents' counsel, the witness says:—

Question. Do you mean to say that you regard Captain Mallon as deficient in the qualifications of a good master in a case of emergency requiring a high degree of activity?

Answer. No, sir; but I think there are other men with whom I should prefer to be with in case of great hazard, but I do not think him disqualified as a master in case of an emergency.

GEO. DAVIS.

Sworn to and subscribed before me June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of Alfred P. Southwick.*)

And the said Alfred P. Southwick being duly sworn as a witness, says:—

I reside at present at Fort Erie, in Canada, that is, directly opposite Buffalo. I know the propeller Niagara, this is the seventh year, I believe. I was in her three years steady. I have known her ever since she was built. I formerly owned a small interest in her, and I sold it about a year ago. I was engineer of her three years.

Question. What were her qualities as a safe and seaworthy boat or otherwise, last fall?

Answer. I don't know that she was any different then from what she was when I left her, aside from the fact that she was eight or nine months older. When I left her I considered her as one of the best vessels on the lakes as a sea-vessel, and one of the best built vessels. I saw her on the stocks. I left her two years ago last fall. I have been on her frequently since I left her. I was on her frequently last summer. The last time was one of her last trips last season.

Question. How many anchors had she?

Answer. Two.

Question. About what was the weight of the large one?

Answer. As near as I can recollect, the weight of her large anchor was about 1,400 pounds, and the weight of the small one was about 700 pounds. The anchors were about as heavy as are carried on that class of vessels. I do not know but what the small one may have been light, but not much lighter than the generality of anchors. What makes me recollect about the weight of the anchors was, I remember comparing them with the anchors of the propeller Ohio, which was a heavier vessel, but I think about the same tonnage. I think the Niagara had about 75 fathom of chain, and about the same size of the Ohio's, which I know was an inch and one-eighth in diameter. I do not know what it would weigh to the fathom. I have been speaking only of the large chain and the big anchor. I cannot say exactly about the small anchor and chain, but I should say it was such a chain as is generally used, about a three-quarter inch chain, but I cannot speak of its length. We almost always used the small anchor and chain, and hardly ever let go the large anchor.

Question. How late do you know that the anchors and chains you have described were on board of the Niagara?

Answer. They were on her a year ago. They were on her the last time I recollect of looking at them last season. It is not a year ago that I remember looking at them. It is about nine months, and that is the time I sold out, down to which time there was no alteration on her. I was engineer on her.

Question. What was the condition of the engine on her last fall, and when you left her?

[Objected to as irrelevant.]

Answer. When I left her, which was two years ago last fall, it was in first-rate order, and I do not know anything to the contrary of its being in the same order last fall when I saw her. I saw it working alongside the dock, and never heard any complaints. I believe Mr. Doty was the engineer on her last fall.

A. P. SOUTHWICK.

Sworn to before me this 21st day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined:—

I saw her on the stocks when she was building, six years ago this summer. She is six years old this June. The last time I saw her, I only took a general look at her. I was all over her and examined her.

Question. How often did you go on board of her last summer?

Answer. I was on board of her five, six, or seven times in the course of the summer, and I do not know but more.

Question. Did you ever weigh the anchor you have spoken of?

Answer. No, sir.

Question. How do you know her weight, then?

Answer. I know it by the manufacturers' mark on them.

Question. Did you ever measure the chains?

Answer. I do not know that I ever did, and I do not know but I did. My business now is keeping a hotel. I have never been master of a propeller, nor a mate. I have never been in any capacity other than engineer. I have been an engineer about ten years. I am not a ship-builder by profession. I have always been around ship-yards, and working in vessels.

Question. How many other propellers did you ever examine the anchors of, and did you ever weigh any?

Answer. I cannot tell you. I have been on a great many, and saw all that was going on; their anchors were all of about the same size. I never weighed an anchor, but ascertained the weight of them by the manufacturers' stamp.

Question. Are you acquainted, as a sailor, with the requirements of an anchor, and the mode of using them?

Answer. I am not a sailor.

A. P. SOUTHWICK.

Sworn to and subscribed before me, this 21 day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being again examined by the respondents' counsel, the witness says:—

I know Robert Jones, who was mate of the Niagara last fall. I know of his being on her three years. He was mate on her a part of the time that I was engineer.

Question. What was his qualifications as a mate and a seaman?

[Objected to on the ground that the witness is not an expert.]

Answer. Good; he was a thorough-bred sailor. He was always careful and vigilant. No man paid better attention to his business than he did.

A. P. SOUTHWICK.

Sworn to before me and subscribed, this 21st day of June, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

(*Deposition of Wells D. Walbridge.*)

And the said witness, Wells D. Walbridge, being duly sworn, said:—

I am in the forwarding business on the lakes and canals. I have been in that business for the last eight years at Buffalo. I know the propeller Niagara, and have known her for the last four or five years, and have shipped goods on her. I have shipped on her more or less goods to large amounts for the last three years. I was on board of her and saw her last fall.

Question. Tell us what was her condition as to sea-worthiness, and her equipments and outfit last fall.

Answer. Her condition was good. I know nothing to the contrary. She was perfectly seaworthy and well equipped, as well as any propeller of her class and size.

Question. Do you know in reference to her anchors and chains?

Answer. I know at one time last fall that she had good chains and good anchors; this was about the first of November or last of October. I do not know what she had the particular trip she was lost, of my own knowledge. The propellers are classed according to their age and size, there is no rule about it, but I should class her as a second or third class propeller in regard to size. We considered her as a well fitted, and a good propeller for the freighting business in which she was engaged.

Question. Do you know the captain of the Niagara, Captain Mallon?

Answer. Not much.

Question. Do you know Mr. Jones, who was the mate of the Niagara?

Answer. I do. I never had any knowledge of him previous to this spring.

Question. Can you speak so as to give us any information of the qualifications of either of them?

Answer. Mr. Jones commands one of our propellers this season. We consider him a competent seaman. I consider him so. I have watched him this spring, and consider him so.

WELLS D. WALBRIDGE.

Sworn to and subscribed before me, June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Being cross-examined, the witness said:—

Question. With what view did you examine the Niagara last fall?

Answer. She has always been a favorite propeller with me, and I have been on board of her a good deal. Being a propeller owner, I have always been in the habit of examining propellers, and all of them particularly. I did not examine any particular part of her, only generally. She had two anchors when I examined her. I do not know that I examined her more particularly than the other propellers I have been on, but I had a thought of buying her when I examined her. My idea is that she would rank with second class propellers as to age; that is, she was not as good a propeller as a new one; that is my meaning. I do not know Captain Mallon's reputation.

Question. Did you know Captain Jones before the last trip of the Niagara last fall?

Answer. No, sir. I did not know him before this spring, and speak only from my observation since. I did not make any specific examination of her anchors and chains when I examined her last fall. I simply saw that she had anchors and chains.

WELLS D. WALBRIDGE.

Sworn to and subscribed before me, June 21st, 1855.

JAS. SHELDON,
United States Commissioner for the Northern District of New York.

Due notice of the taking the foregoing testimony is admitted, and regularity in taking the same, such testimony to be used and admitted at the hearing and other proceedings in the suit in the same way and with the like effect as the testimony heretofore taken in this suit.

June 21, 1855.

S. G. HAVEN,
of Counsel for Resp'ts, Propeller, &c.

W. P. LYNDE,
Proctor for same, per Havens.

EMMONS & VAN DYKE, and B. NEWHALL,
Proctors for Libellants.

(*Deposition of Andrew Anderson.*)

DISTRICT COURT OF THE UNITED STATES
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Machinery, Tackle, &c., ANSEL R. COBB, CORNELIUS H. CANFIELD, FRANKLIN LEE, WILLIAM H. ABELL, JOHN ALLEN, Jr., and HUGH ALLEN, Claimants.

In Admiralty.

Depositions taken on the part of the claimants, by consent of parties, before Winfield Smith, a commissioner of this Court, at his office in the city of Milwaukee, on the tenth day of September, eighteen hundred and fifty-five. At which time and place appeared Mr. Newhall, of counsel for the libellants, Mr. Lynde, of counsel for the claimants, and Andrew Anderson, a witness, who, being duly sworn, deposes and says:—

I am in the produce business, a vessel owner, &c., at Buffalo, New York. I have been a sailor for about fourteen years. I have been master of a vessel for about nine years. The rest of the time I was mate and before the mast. I have managed propellers, and have sailed one for about three months. I have owned an interest in a propeller, but do not now. The condition of the Niagara last fall, about the last of November, at the time she left Buffalo on her trip, was good. I considered her sea-worthy in every respect. I was her agent at Chicago, and saw her every time she came up. Every time I saw her she was sufficiently manned. I should think her anchors were sufficient. I know her captain, Hugh Mallon. I have known him about twelve years. I call him a good seaman and a competent master. I own an interest in a vessel he is now sailing. I sailed a brig in the Buffalo and Chicago trade for five or six years, different brigs. I sailed the steamboat Indiana on Lake Erie part of one season, till she was sold. I am acquainted with Presque Isle, on Lake Huron. We call it a safe harbor for a bay. It is a natural bay. We frequently resort there to get away from storms. I have myself been there frequently. I have anchored there.

Question. Suppose a propeller entering that harbor at night in a gale of wind, with the wind northeast or east-northeast, what preparation should she make?

Answer. If it blew so hard that I considered it difficult to go alongside of the dock, I should clear away an anchor; that is all I should do until I got in. I mean by clearing away the anchor, I should get it ready to let go; I should overhaul the chain (you would only want a short range). In a gale of wind it would not answer to overhaul the whole of it, nor a large scope of it, because it would get away

from you. You want to weather-bit it and let it out by degrees. There is a shackle in the chain every fifteen fathoms. A shackle is a link with one end open and a bolt running through it. A shank painter is the rope round the anchor, fastening the flukes to the bows to keep the anchor from slewing. Before letting go the anchor you cast off the shank painter, and then the anchor swings by the ring-stopper from the cathead. Going into that bay, with a heavy gale from E. N. E., I should get my big anchor ready if I could. If I got in all right I should round to and let go my anchor. I consider the anchorage ground good in Presque Isle. I have rode through a gale of wind there in a brig with one anchor. I have laid there with the wind eastward, blowing right in. No wind will blow an unbroken sea into that harbor, only a dead swell. A wind east-northeast blows right in there. I never went in with the wind northeast that I recollect. I have gone in with the wind to the southward, and it has got round and blowed a gale to the eastward while I lay there.

Question. If you found yourself near shore near Presque Isle light in the night in a heavy gale blowing east-northeast, and a storm of snow, would you or would you not consider it proper to go into Presque Isle?

[Objected to by libellants' counsel.]

Answer. If I considered the vessel or cargo in danger by staying out, I should go in by all means. I did not see the Niagara ashore in Presque Isle bay; the place where she was ashore was pointed out to me by Mr. Burnham. I saw the Niagara in Detroit when she went down there to repair, after she got off, just as they had got the dry-dock pumped out and commenced work on her.

Question. Do you know how her cargo was stowed, or what condition it was in at that time?

Answer. I knew nothing about the stowage of her cargo until she arrived here. She was unloaded here and at Chicago under my supervision, and I know how her cargo came out, and, consequently, how it was stowed. I examined the external appearance of the packages, and some two or three boxes that were in the hold were opened. The boxes contained cotton goods. Those boxes were apparently uninjured. The goods looked perfect in every particular, as far as I could judge. The goods which came out damaged were injured by water, the goods above water were apparently not injured at all. I recollect one sack of coffee in particular about one-quarter wet, where the coffee above the water was not damaged that I could discover; and the party to whom it was consigned offered to take it. The Niagara had between three and four hundred tons of cargo aboard. I can't tell exactly what proportion of it was damaged, only by referring to our receipts of cargo in good order. I should judge that less than a quarter of the cargo was damaged. I don't call the liquor in the hold below the water damaged.

[This testimony relative to the amount damaged objected to by libellants' counsel.]

I saw the cargo all unloaded and delivered, and this estimate is based on what I saw myself. I don't think a package came out but what I saw. I am acquainted with the harbor and somewhat with the shore at Presque Isle. I know there are no storehouses there. I was there last in the month of June. I have only been there once since the Niagara went ashore.

Question. Were there any facilities there by which the cargo of the Niagara could have been stored?

[Objected to by libellants' counsel.]

Answer. There is no place there where the cargo could have been taken out and stored, and have been anything like as safe as it was on board of the boat. I should think it was a mile or over by way of the beach from where the Niagara lay (as pointed out to me) to the nearest house.

[Objected to by libellants' counsel as incompetent.]

There was no house at Presque Isle large enough to hold any large proportion of her cargo. I say that the cargo was safer on board the propeller, because there was no houses there to put it into; and I have been brought up in the woods, and have helped build log-houses, and know the difficulties of building them. I was born in a log-house covered with bark, and have helped build lots of them.

Question. With the propeller unbroken, merely aground with that leak in her, and the water five feet deep in the hold, if the cargo could have been got ashore, would you have felt authorized to have broken bulk and divided that cargo among the houses there?

[Objected to by libellants' counsel.]

Answer. I should not. I will give my reasons. There were not houses enough to hold the goods not damaged. The wet goods, I should judge, were better off to remain in that cold water through the winter than to be taken off and distributed on shore. There was no cover for them and there were no facilities for drying them, and they could not hurt much more after they had been ten days in the water by remaining longer. That was after navigation had closed. I don't think the goods would heat there. I don't think they did heat, because sheetings, which had been there under water all winter, was washed out and sold in Chicago at New York cost. I think it would have been rotten if it had heated; it was not rotten, because it was tried. I don't know any reason why the cargo would heat in her hold. I think it would not heat because it was cold weather and cold water. I know the cargo did not heat until after it was taken out. I don't believe it would have been of any service to open the propeller's hatches as she lay there. She was stowed full, as I understood, and the air could not circulate if the hatches were opened. Opening the hatches will not prevent corn from heating.

Cross-examined by Mr. Newhall.

We are in the forwarding and commission business. The name of our firm is Cobb & Anderson. The members of that firm are

Ansel R. Cobb, one of the respondents here, and myself. We went into partnership last winter, in February, I think. I own vessel property in connection with him. I am not interested in the American Transportation Company. He owns some scrip in it, I believe. The cargo was not taken out of the Niagara at Detroit. A few boxes and packages were taken out to light her over the mitre-sill of the dry dock. I think towards a quarter of her cargo was then in her hold. I don't know though, for I did not go into her hold there; some was taken out there, but the majority of it was taken out at Presque Isle. I think this libel was filed and the vessel seized the first day she came here. I think she was here some three days. She unloaded her goods down at the red warehouse of Goodrich & Hunter. In most instances, I judged of the damage by the outward appearance of the cargo. I considered the liquors not damaged. I did not reckon the hogsheads of molasses as not damaged. I could not say whether they were damaged or not. They looked well. I saw one barrel opened and it looked well and tasted first-rate. It was sold by Mr. Wall, the auctioneer, and I saw it there. I don't recollect whether any of the packages I saw opened belonged to Sexton & Co. The packages I saw opened, I saw on the dock at the red warehouse. I think they were opened by handling in taking them ashore. The packages in the water were discolored, stained. There was some bad smell about the Niagara, arising from her hold, when I saw her in Detroit, but not so much there as here. It was caused by fish in the hold, I understood. I can't recollect all about the condition of the particular goods of the different consignees here at Milwaukee. Captain Mallon owns one-third of the schooner Belmont and is master of her. A wind N. E. or E. N. E. blows pretty near square into the harbor of Presque Isle. Reefs outside break the waves. It might take two hours to get up the cable-chain out of your hold, and it might only take twenty minutes if you were outside in a gale. In a gale it is sometimes almost impossible to get your anchor cleared away, where you are crowded for time. The chain runs through deck-pipes into the hold. This is the case with all propellers, so far as I know of. I sailed the propeller Sun three months last year. I never was in a propeller in any official position before, except that I have been agent and manager of propellers, and I have been among them a good deal. My interest with Mr. Cobb does not extend to any of the matters in litigation here. I have no interest in this suit, and have never had. I have acted as agent for Mr. Cobb and the other owners of the propeller in this suit; that is, they told me to attend to it. I have made no arrangement about pay, and don't expect any. I am a vessel owner, and am interested to see how far our responsibilities extend. I was here as their agent; that is, I was here to look after and deliver the cargo. When these suits were commenced, I told Captain Jones if there was any reliable man that knew anything about the propeller Niagara and these facts, to bring him

along if he would come. I did not see Mr. Burnham until I saw him in this room, after he had nearly done testifying. I saw him in Presque Isle about two weeks, I think, after he had been here. I was here at the time the last testimony was taken in court. I was here as a witness. I am now here as a witness. I don't know of anything I have to do, only to give my testimony.

Re-examined by Mr. Lynde.

I mean that if I had a mind to make out a bill for my time and services in coming here, it will be paid if reasonable. I don't expect to make out a bill for services. Of course, I expect to present a bill for my expenses. I don't mean to pay my own expenses.

A. ANDERSON.

District of Wisconsin, ss.

I certify that the foregoing deposition was taken at the time and place named in the caption, and in presence of, and by consent of the counsel for the parties. That the witness was first by me sworn to testify the truth, the whole truth, and nothing but the truth in said cause, and that his evidence was by me reduced to writing and carefully read over to the said witness, who then signed the same in my presence.

Witness my hand, at Milwaukee, in said district, this fourteenth day of September, eighteen hundred and fifty-five.

WINFIELD SMITH,
U. S. Commissioner.

(*Deposition of Robert Jones.*)

Robert Jones, sworn in open Court, called by respondents:—

I was first mate on the Niagara last season; was on her in that capacity when she was stranded at Presque Isle. I attended the loading of her. The entire load was taken in at Buffalo. The cargo was a general cargo of merchandise; teas, sugars, coffees, fish, liquors, molasses, crates of crockery, bales of sheeting, boxes of dry goods. All the liquors and molasses were in the hold on the ground tier. There was a hundred and ten boxes of codfish and great number of crates; I think sixty or seventy on the ground tier. I have reference to both the holds. The fish, and crates, and molasses and liquors were all in the forward hold. There were two hatches and one hold. That under the forward hatch was called the forward hold. They were over the whole hold on the ground tier. There was another hold aft over the shaft. The heavy goods were put below, and lighter goods on top. The bales of dry goods were put on top the crates and barrels; some of the boxes were put on the ground tier. No barrels of liquors or molasses on top of those boxes. The hold was full and hatches battened down. The after hold was also filled. The deck was full fore and aft, except the space to wood.

The goods on deck were light goods, such as boxes of merchandise, and teas, and sugars in barrels, and bales of sheeting. There were one hundred bales of bats for one man, and a great many bales of sheeting. No wagons but willow wagons, and they were on the hurricane deck. The steerage cabin was full of chairs, sofas, bureaus, willow wagons, and so forth. She was stowed as well as any boat could be stowed. We took particular pains on account of the lateness of the season; she was full all through and between decks. The custom-house tonnage is four hundred and fifty tons. I have been six years on the lakes, and twelve years on the ocean before I came here. I always considered her one of the best seaboats on the lake. She was then all perfect in her equipments and a full complement of men. We left Buffalo with her in this condition. Took on nothing but wood. She was stranded on the morning of the third of December. At ten o'clock the night before, it came a blow from the southeast, and snowing. It kept falling round to the eastward; snowed very heavy, and the wind kept increasing. We made Thunder Bay Island about twelve o'clock. The wind kept hauling round to the N. E. till it increased to a gale. It snowed very heavy, and the boat rolled across the sea pretty bad. We got down toward Presque Isle. It cleared up a little and we saw the light. The sea was very heavy, and a very heavy snow-storm; we concluded it was better to go into Presque Isle. The sea was so heavy we knew she could not lay at the dock, and we let go her big anchor, and she kept dragging all the time. The wind caught her on the larboard, and she dragged all the time. We saw she would go ashore, and we thought better to slip her chain and get up to the dock if we could. Before we could slip the chain she struck aft and went on the beach broadside. After she went on the beach, I went down on the lower deck and had the pumps tried. She pounded pretty heavy and some said she would make water. All at once she began to make water very free. I went to the engineer and directed the engine-pump started, and pumped about five or ten minutes, and the sand came in so fast as to choke the pump, and we could pump no more. When we tried the pumps there was no water in her. The engine-pump is worked by steam. It has a small engine by itself, independent of the propeller pump. The sand got through the hole in the bottom of the vessel. The engineer went down and tried to keep the sand from the pumps, but found he could not do it. The water came in so fast he had to leave it. He punched holes in the pumps further up so that it would not draw sand; but it drew sand all the time, and he could not work it. The gale was all the while. This pump throws a two-inch stream of water. It throws as much water as two hand-pumps. It keeps a constant flow. The three other pumps was kept going, and they pumped sand, and the water gained so fast that we thought it useless to pump longer, and we quit pumping. In entering the harbor we steered west-southwest till we got inside, then we doubled the inside of a little shoal called a spit, and

round to southeast to get to the pier. After we entered, we rounded to towards the end of the pier, as near as we could judge; the atmosphere was thick with snow. We round to, to let go her anchor. It was off the end of the pier; could not tell the distance. It snowed very thick; we could not see. She dragged about a quarter of a mile to get on shore; probably a little more. A northeast wind blows into the bay. The anchor was hanging to the bows while we were going in, and was ready. No difficulty with them. When we saw the light we were east of light, probably a mile or two off. It was thick and snowing; could not see the shore, only the light. Boats double round pretty close to shore going up. She was in the usual course. I have been acquainted with that harbor for five years. It is not a difficult harbor to go into. We can go in pretty easy. After we got into the harbor there was nothing that could occur to me to keep the boat from stranding that was not done. In the forenoon, Captain Mallon and I, and some others, went ashore in a boat. We went over to see the propeller Plymouth that was lying aside the dock, and went to see Burnham, the man who keeps the place, to see if we could get any assistance. We asked him if there was any place where we could put the goods; he said there was none. He said in his opinion there could be nothing done unless a steamboat would come. We did not see a board in the whole place. I don't remember that we inquired of Burnham about lumber. We then went on board the Plymouth and consulted with Captain Gibson and others, and Captain Mallon came to the determination to leave some good trustworthy man aboard, and go to Detroit to get a boat to come up. The prospects were the navigation was closed for the season; we were going to Detroit to get a boat and some tackling and get her off if we could. We went down in the Plymouth. Kept three men in care of the boat and cargo. The ice was so frozen that she could not get through. We went on to Detroit by land in sleighs from St. Clair and found the vessels frozen in. We made a protest at Detroit the day we got there.

Question by Respondents. If the vessel could have been unloaded, was it better to do so than to leave the cargo on board?

[This question is objected to by libellants, and the answer taken subject to the objection.]

I think, for the safety of the boat and cargo, it was better to leave the cargo aboard. There were no means where the cargo could be taken care of there; there was no place to put the goods, and she was three hundred and seventy-four feet from the edge of the boat to the edge of the beach; and there was no way of getting the goods ashore that I know of. The ice was not strong enough to take goods on, and there was a scow lying in the bay at anchor, covered up by ice. The spray washed so over her that she was covered over with ice, and the bay was frozen solid. It blew a gale of wind all the day of the third, and the bay froze over that night. It made some ice the morning we went in; all the time I lay there it snowed and

froze very hard. The snow was about a foot on the level. In some places it was drifted three feet. In going to Burnham's, in some places the snow was to my middle. Before the vessel filled, she pounded very hard. In the hold, where the goods were, the water was raised five feet over the floor. The floor is raised two feet, or two and a half feet above the keel. I talked with Fargo very little; was not much acquainted with him. There was no lowering the water by pumping. I recollect saying we lowered the water a little. I told Fargo we had been pumping all morning, and had lowered the water a little—one or two inches probably. It was the morning before we left Presque Isle, or the morning we went ashore; I am not certain which; we pumped all morning, and lowered a little. Did not know how much; whether the water fell outside or not, I do not know. The fall was probably two inches, if I should guess it. We used all the pumps we had We pumped to see if we could gain on her—to see if we could get her off. I was there this spring when she was got off. I got her off. I think we got there about the 27th April. Found her where we left her; the watchman in charge. We lightened the goods off in the steamboat Fashion, which we procured. We had a steam pump, and pumped her out. We did not take all the goods out. We took out more than two-thirds. After we pumped her out and lightened her, we got the steamboat to take her off. We got the carpenters down to cut away the inside flooring, and found the holes, and stopped the holes in the inside as well as we could. Then we hitched on the steamboat, and dragged her off. Hauled up to the dock. She made water fast. We got canvas around. We took her to Detroit immediately, and had her repaired, and returned and took the goods on board, and came on here. While this vessel was being repaired, part of the goods were on the dock covered with canvas, which I brought up from Detroit in the steamboat Fashion, on purpose, and the rest was on shore. A man could not have worked in the water when the vessel was stranded, he would have frozen to death; it would be impossible. She filled in two or three hours after she began to make water. This was a general ship, carrying goods indiscriminately.

Cross-examined by Libellant.

I am master of the Niagara this season. Mallon is sailing a vessel. The propeller Mayflower left Buffalo a week ahead of us, and the Iowa about three or four days. I think the Dunkirk left after, but not positive. The propeller Nile left two days before us. We fell in with the Iowa on lake Erie, and supplied her with wood; we kept in company to Malden, the mouth of Detroit River. The Mayflower was lying at the harbor called the Round Doe, on Lake Erie. Saw the Nile on St. Clair River, taking in fuel. They were all bound for Chicago. Saw no others bound up. The Nile had not left the river when we left. We were as full as we could hold—chop

full. As much as I know, it was a valuable cargo. Not quite one-third, or about one-third was for Milwaukee. I think the hold was nine feet from the floor to the main deck. There was not quite enough of barrels and crates, boxes of fish to make a ground tier. A crate would rise four feet, and a barrel from one and one-half to two feet. Not to my knowledge were any of those that composed the ground tier stowed on top of each other, except a few boxes of cod-fish. I suppose these articles formed a ground tier of two-thirds of the hold. The Milwaukee goods were stowed near midships, down the middle hatch. Some of these articles formed a ground tier under the Milwaukee goods, not under all the Milwaukee goods. We used boxes and barrels of sugar to complete the ground tier. I presume there were goods of Sexton on the floor, but cannot say. We put in the heavy goods on the floor as far as they went, as they came along, and when we had not, then we put in boxes of dry goods on the floor. The heavy goods may have gone half way over the floor. The middle hatch was full of Milwaukee goods, except a few crates for Chicago. From a half to two-thirds of the ground tier of barrels and heavy freight. I don't know that the vessel or freight was insured when we left Buffalo. I heard some person say that a part was insured. I am in the employ of the American Transportation Company. Mr. Cobb is a principal owner of the vessel. He is a member of this Company, as far as I know. I have been running in and out of this port all this season. I was here when the deposition of Mr. Burnham was taken. He came up in my boat as far as Sheboygan. I brought him to be examined as a witness in this suit. The captain was on deck when we entered Presque Isle harbor. When we went in we expected to come to an anchor. I have been at anchor at that harbor before. Never dragged before to go ashore; may have dragged a little before the anchors would hold. We may have dragged a quarter of a mile or more before she struck. It was snowing. We could not see well. We worked the engine ten or fifteen minutes before she struck. We left the vessel and went ashore about ten o'clock in the forenoon. I did not know Captain Fargo very well. Had seen him before. I presume I had some conversation with him that morning. A propeller in a storm will go easier, dead before the sea. I was up from eleven o'clock until the vessel went ashore. The captain was on deck also. The captain gave the order to run into Presque Isle. We threw out the big anchor—the starboard anchor. The wind catched in the larboard bow. We could see a propeller lying at the pier. We were but a little way from the pier when we let go the anchor. We succeeded in slipping the chain. She struck before we slipped the chain. We thought we might work her off. We could not get ready to slip before. She struck aft. We could not work her off until we got clear of the chain and anchor. We tried to heave up the anchor with the windlass, and could not do it, it was blowing too hard; she was going too fast to heave the chain. We had not power enough

to do it. When we found we could not heave the chain, we endeavored to unshackle it, and she struck hard before we could do it. I attended to this myself with the hands. I presume the anchorage is good there. I think if the anchor had got a hold of the ground, it would have held her. I never let go in such a strait as that. We have done so when we have time, before a vessel would go ashore. We had not time to let go two anchors. It was but a few minutes after we let go the anchor until she struck the beach. It might have been from fifteen to twenty minutes. It will take five to ten minutes to tell if the anchor holds. We let out thirty fathoms of chain. It might take ten to fifteen minutes before the anchor with thirty fathoms of chain would bring the boat up. When we let go the anchors, we were closer to the Plymouth and to where she struck. It might have been half a mile from the pier to the beach where the vessel struck. When we let go the anchor, we could see the snow on the beach. It was snowing very hard. The small anchor is ready in ordinary circumstances. In this case, before we could pay out the chain of the small anchor, the vessel would be on the beach. We did not attempt the small anchor. It was a pretty close place to come to anchor in a gale of wind. From Thunder Bay we steered N. N. W. a little while; then west of north; then kept her off N. W. I believe were heading N. W. when we saw the Presque Isle light. The captain on deck. The vessel has but one pump that works by steam. I think that pump worked ten or fifteen minutes, when it filled with sand. When we lowered the water, we used only the hand pumps. We did not take any but the after hatch to the fire hold after she struck. I was not down the freight hold after she struck. There was more water aft than forward. There was another hold aft the fire hold, that holds three hundred barrels of flour. The fire hold is aft midships. She made water so fast that I could not go down to the floor of the fire hold. She was for two or three hours filling. When we lowered the water, the water in the bay was perfectly still. All the hands were on board then. Probably not the captain. We kept pumping all the morning. I think it was the day after we went ashore, the fourth, I think, of December. We stopped pumping because we could not do any good. The sand partly choked the pumps, and wore boxes out. One of these pumps was situate forward, one midships, and one aft. The forward pump was fifteen or twenty feet from the bow. The one aft is about twelve feet off the sternpost. They are stationary. That quicksand worked all through under the floor. The sand wore the boxes of the pumps. It did not choke them so much. The sand came in the bottom. There were other holes forward; it might have come in there. The motion of the vessel would work the sand forward. Our object was to see how fast she would make water, and we found we could not do it, the sand kept wearing the boxes, and the men gave out. If we could have pumped her out, we would have endeavored to keep her pumped out until a boat would come. At first we lowered the water a little,

at last it did not lower any. There were no means of taking that cargo ashore while we were there. In the winter we might have got them out on the ice, but there was no place to put them. There was a bank of ice on the beach four feet high before we left. It was anchor ice along the beach piled up high, hard to get over it, the day before we left. The ice formed on the beach before the bay froze. We had to creep over it. We could not have rolled the goods over it without a great deal of trouble. I think it is necessary to take a great deal of trouble to preserve a cargo. I don't think the ice was strong enough to roll a barrel of sugar on it. I did not try it. Part of the ice went out of the bay before we left. The vessel was froze in solid when we left. The men could not have worked in the water to get the cargo out. It was too cold. The enquiry was made of Burnham about lumber, and he said there was none nearer than Devil River, thirty miles by the beach. If places could have been got to put the cargo in, we might have waited there till the bay was frozen solid, and then taken it ashore. I think there was four or five feet of water in the midships hold when we left. We made up our mind to leave the evening of the fourth. We left, I think, on the fifth of December. In the after hold they were Chicago goods.

Re-examined by Respondents.

The anchor was let go clear. It was clear when we hove up this spring. I have seen a great many vessels drag ashore. Have been dragged ashore myself. I saw the holes in the bottom of the propeller. Two holes were large enough for a man to go through. There were three holes. I put my head up through one. If we had taken off the deck load, we would have taken out a good deal that was on top before we would come to that in the water.

Re-cross-examined by Libellants.

On the fourth, the wind changed to the north; a heavy sea into that bay; not so heavy as a northeast wind. It blew hard on the fourth all day. The water might rise and fall again in half an hour. I think it was on the fourth we pumped. It did not blow near as hard on the third. Cannot tell whether the wind subsided or not. The forenoon we pumped it was pretty windy. It was froze all round the vessel. The beach was froze round. Could not tell that the water subsided. The vessel made a rolling motion, enough to work the sand about. The action of the vessel did not break the ice.

Witness recalled by Respondents.

From half to two-thirds of the entire cargo was delivered uninjured. About one-half of the Milwaukee cargo was delivered uninjured. I was present when it was delivered. There were some of Sexton's goods that were stowed below; of this I am positive. I paid more attention to Sexton's goods than any others, as he had a great quan-

tity on board. I say they were not wet. There were some herring and other things that had not been damaged by water.

(*Deposition of Hugh Mallon.*)

Hugh Mallon sworn in open Court. Called by respondents. Objected to by libellants as incompetent, it being conceded that he was the master of the Niagara at the time the injury complained of.

Witness here produced and filed a release to him, from the owners, of all claim of damages, the execution of which is admitted. The witness was heard, subject to the objection, and he testified as follows:—

I was captain of the propeller at the time of the stranding. It was on the third of December, eighteen hundred and fifty-four, about four o'clock in the morning. We left Buffalo on the 29th November, bound for Chicago. The vessel was well appointed and equipped. Had a full complement of men—I think twenty-two, all told. She was a good, staunch vessel. Had been master of her five months. She had two anchors; the largest, stock and all, about 1,700 lbs. She had two chains; the big chain was one inch and an eighth; sixty fathoms long. Nothing unusual until the storm. It commenced to snow at eight o'clock in the evening of the second of December, in Saginaw Bay, and continued to snow all night very thick. At 12 o'clock at night it commenced to blow from the N. E.; about one, we got to soundings in the Thunder Bay Islands. We could see nothing more until we made the Presque Isle light, about between three and four. Until then it blew a perfect hurricane. Before we got to Presque Isle, the gale was tremendous heavy. I got pretty close in before I saw the light. A half or three-quarters of an hour before we made the light, I had to keep the vessel off her course two points, to ease her in the sea. When I made the light, I found it would be a great risk to haul her off again, to get her round the point. I concluded it best for all concerned to go into the harbor. I went in and let go the anchor. The anchor dragged, and the vessel dragged on the beach. When I found the anchor would not fetch her up, I worked the engine ahead; but the gale was so severe, I could not keep her head to the wind, but would go off, and she kept dragging until she struck. I kept paying out, expecting she would fetch up, until she got pretty close to the shore. When I found she had got so close to the beach, and the anchor would not fetch her up, I tried to work her up, and to let the chain go; but, before we could do this, she struck. The stern struck first. She struck aft, and fell off broadside on the beach. The sea was working her. She worked further up the beach. She did not work ahead or astern any. She was then in about seven feet. The water, I think, was pretty near even. I did not measure. She rolled considerably at first. I rounded to off the end of the dock, which was considered the best anchor ground, and let go the anchor. I think she dragged one hundred or more before she struck. The wind was

blowing right into the harbor. We were nearer the land than usual when we made the light, for it was considered dangerous to keep her on her course, she rolled so heavy. I had to keep more with the wind, to ease her. When we made the light, we were about three miles from it, and some more than a mile from the land. It had then ceased snowing for a few minutes. It might have been five when she was beached. When she was beached, I tried the pumps, and found she did not make water for half an hour. After that, they told me the water made so fast on them they could not keep her free. We got all the pumps with the engine at work, and all hand-pumps. We pumped until we found there was no use, and we gave up and she filled. Jones, the mate, and I consulted what was best to do, when we went ashore to see if there was any possibility of unloading her and getting her off. We wanted to see if there was any place to put the goods. We went to Mr. Burnham's, the proprietor of the place, to see if there was any place to store the goods, and he said there was no place where we could store the goods, and we could not find any place. I think I asked him how we could land the goods there, and he said he knew of no way, unless we got a steamboat or a tug. I inquired of him because he was the proprietor of all the buildings there. Some buildings there were occupied by Burnham's hired men. I asked him if there was anything to build a shed with, or cover it, and he said there was not a board on the island. I think there was from a foot to eighteen inches of snow. Jones and I then went on board the Plymouth, then lying fastened at the dock. I went there to counsel with the master of the Plymouth what was best to do. He and I consulted about what was best to do. I came to the conclusion that the safest way was to leave the goods on board; that more of them would be protected on board, than to take them on shore. And I left them on board. I left the watchman, the wheelsman, and the porter in charge on board; three competent men. When we left, the water in was same with the water outside. It became so a few hours after it commenced to leak. In the forward hold, I think, the water was about five feet above the floor. In the other hold it was a raised floor, and there not so much water in it—probably a foot or two. The first mate stays on the dock and sees that the goods are put aboard, and the second mate and hands stow the cargo in the vessel. I and all the hands, excepting the three left, went away in the Plymouth the morning of the sixth. The Plymouth was going to Detroit, bound for Buffalo. The Plymouth got into St. Clair River and was froze in; all the vessels were froze in. I left on the Plymouth to go to Detroit, to notify the parties concerned, and to get a boat, if possible, to go up and light off the goods. I had to go from St. Clair River, where the Plymouth was frozen up, to Detroit by land. The Niagara was full all over her deck. What I saw of it, were cases, bales, boxes, and some barrels of sugar; one wagon on the hurricane deck. I had two barrels of whiskey, that I had brought up for Burnham, to leave at Presque Isle. I have known the harbor

at Presque Isle for twenty years. I did not think it was safe to go by the harbor. I was afraid, if I attempted to haul round, to go on, that she would get into the trough of the sea, and might wash off her deck load, and destroy more than to go in. I was so close in, that I would have run a great risk of losing the boat and property by attempting to go on. The storm continued all the next day. I suppose it was the worst weather there has been on the lakes for twenty years. In that time, I have not seen so bad a night. It was very cold; the ice made fast. By the next morning after the stranding, the bay was frozen over, and it was so cold the ice formed in flakes or ripples. The scow at Presque Isle was anchored more in the bay than where we were lying, and it was frozen in; and the wind blew the water over it, that it was a body of ice. When I went to Detroit, I made a protest. The mate and second mate were with me, and we three made a protest.

This is the protest here shown the witness.

Court adjourned to 9 o'clock to-morrow morning.

Thursday, August 23d, 1855.

Witness Cross-examined by Libellants.

I am not the present master of the Niagara. Mr. Jones is now the master. He was mate last season. We met with nó detention on St. Clair Flats. The wind shifted to the northeast at 12 o'clock that night. It was varying from S. E. to N. E. It was not steady. We went into Presque Isle on account of the storm. We generally wooded there. We let go the large anchor. The vessel was then drawing about nine feet aft, and probably not so much forward. The vessel must have struck in about nine feet of water. I could see the beach the night we were in the bay, not distinctly. We could see the haze where it formed. It was snowing hard when we let go. I could judge of the distance from the beach. We could not slip the chain, as she was dragging. The steam would not propel her with the chain fast. When we went in, I expected to come to anchor there. I have dragged an anchor before. In extraordinary gales it is a frequent occurrence. That was an extraordinary gale. There are two freight holds, and three hatches, and a fire hold; the aft freight hold has a raised floor over the engine. This was about six feet deep. The fires are probably four or five feet from the ceiling. We left the vessel after we went ashore some time in the forenoon. There are two points difference between N. E. and E. N. E. We had a full cargo. It was a general cargo of merchandise. The cargo was destined to Milwaukee and Chicago. I think more than four hundred tons on board.

Re-examined by Respondents.

The tonnage of the vessel was four hundred and fifty tons, custom-house measure. This was a general ship, and carried for several

persons. I understood the raised floor is two feet; it might be higher. The object is, as the boat is sharp, to raise the freight to a level and above bilge-water. I do not know James D. Cartwright. I never said to Captain Fargo, Damn the propeller, it may lay there all winter for me, or anything like it. We said it was too bad to have so much spirits go ashore. I think I never used such language in presence of Molison. I don't know him.

Re-cross-examined by Libellants.

Saw other persons at Presque Isle than Burnham. Had no conversation with them to my knowledge.

(*Exhibit* A.)

IN THE UNITED STATES DISTRICT COURT
for the District of Wisconsin.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES,

vs.

THE PROPELLER NIAGARA, her Engine, Machinery, Boats, Tackle, Apparel, and Furniture, ANSEL R. COBB, JOHN ALLEN, Jr., HUGH ALLEN, FRANKLIN LEE, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, Respondents. JOHN J. TALLMADGE, Claimant.

Whereas the propeller Niagara was, in the month of December, in the year 1854, stranded at Presque Isle, being then laden with a cargo of merchandise, and one Hugh Mallon being then the master of said propeller:

Now, know all men by these presents, that we, the undersigned, Ansel R. Cobb, John Allen, Jr., Hugh Allen, Franklin Lee, Cornelius H. Canfield, & William H. Abell, the respondents in the above entitled action, and the owners of said propeller at the time of such stranding, in consideration of the sum of one dollar to us in hand paid, do hereby fully and forever release and discharge the said Hugh Mallon from all actions, causes of action, damages, claims, and demands whatsoever, for or by reason or means of the said stranding of said propeller, or of any matter or thing done or omitted to be done by the said Mallon, touching or concerning said propeller, her boats, tackle apparel, or furniture, or the cargo thereof, or any part of such cargo, or her freight, at the time of such stranding of said propeller, whether before or after the same occurred.

In witness whereof, we have hereunto set our hands and seals, this second day of July, A. D. 1855.

JOHN ALLEN, JR., [SEAL.]
HUGH ALLEN, [SEAL.]
WM. H. ABELL, [SEAL.]
CORNELIUS H. CANFIELD, [SEAL.]
A. H. COBB, [SEAL.]
FRANKLIN LEE. [SEAL.]

(*Deposition of William Bloomer.*)

William Bloomer, sworn in open Court. Called by respondents.

I reside in Detroit. I am a ship carpenter. I worked on the Niagara, this spring, at Detroit; this spring when she came down for repairs. Her bottom was in a pretty bad condition when she was brought to Detroit. She came into the dock the seventh of May last. She was taken upon the ways out of the water. They said she came from Presque Isle. The bottom was pretty badly chafed, and I think three holes in it. The largest was aft, on the starboard side. One place it broke through between the frames eighteen or twenty inches one way, and I suppose ten or twelve the other way. I think the holes were caused by a hard substance from below. The other holes were not so large; one on the starboard side, and one on the larboard side forward. These holes appeared to be probably chafed through.

Cross-examined by Libellants.

The larger hole might have been done at one blow. The hull was not much chafed just there. The planks were still there; they rose up. Would let in a big stream of water. Cannot say how large a volume of water the hole would let in. It would be a stream of four or five inches, I think. This hole, I think, was about thirty feet from the stern.

Re-examined by Respondents.

The hole might have passed more than four or five inches of water. The large hole was just under the turn of the bilge, about thirty feet aft.

[This evidence was taken subject to objections on the part of libellants.]

(*Deposition of William Dickson.*)

William Dickson, sworn in open Court. Called by respondents.

I was wheelsman of the propeller Niagara when she was stranded. I assisted in stowing the cargo. We got the cargo principally at one dock. All the heavy goods were put into the bottom; crates, barrels of liquor, molasses and rice barrels. All the stuffs, such as coffees, teas, bales, boxes, and such like, was over them; over two-thirds of the entire forward hold was covered with the heavy articles. Have been in the boat this season. I think over one-half the entire cargo was delivered this spring in good order. I think the deck holds about one-fourth of what the hold holds, and they were both full. I staid on board during the winter. Two men, the watchman, Alexander Miller, and the porter, Michael Pond, were with me on board. John Ramsdell was there a part of the winter. The watchman and he did not agree, and he left. The watchman kept the captain's door locked, and he was not satisfied with that. I was at the wheel when

she stranded. The pumps were tried after she struck. They tried the pumps a little over an hour. The sand was coming out of the pumps, and the water was gaining all the time. We pumped again before the captain went, I think the day before he left. A few days after they left, three of us tried the pumps to get some coal, and we could not lower the water any, and gave it up. I think it is seven years since I went to sea first. That was the worst night I ever saw on these lakes. The heavy stuff covered most of the ground tier, and the cargo was better stowed than usual.

Cross-examined by Libellants.

I am on the Niagara now. While the cargo was stowing I was on board almost all the time. About quarter as much between decks. I mean, as in the hold. I remained on the vessel every day during the winter. I never stopped ashore over night. The sand choked the pumps so that they could throw no more water out of them. I went ashore the same day she stranded, in the forenoon. I think the mate was with me. I think at the time we went to Burnham's. I think there were three or four in the boat going ashore. I was at the forward pump. I know it choked with sand. I was told the others choked. I think it choked in about an hour after we commenced pumping. We overhauled the box two or three times, and could do no more with it. The sand choked it. I saw them sound the water round the vessel. I think on both sides. The midship hatch was opened in the spring, in March, to let air in. No hatch was opened before the master went. I saw them sound the hold to see how much water was in her. There were eight feet and a half on the larboard quarter outside.

Re-examined by Respondents.

There were no liquors on deck, or between decks.

(*Deposition of John W. Webster.*)

John W. Webster, called by respondents. Sworn in open Court.

Have been a seaman forty-three years. Have been on the lakes twenty-six years. Am well acquainted with the waters of the lakes. I know the harbor of Presque Isle. It is a good harbor, with the exception of a N. E. or E. wind. I heard Captain Mallon testify about going in there. I did not hear Jones testify.

Question. What would be the proper mode of managing a propeller after she entered that harbor, in such a storm as has been described by Captain Mallon, for her safety?

[Objected to by libellants, as incompetent and irrelevant.]

The witness. I should have rounded the boat to and let go the anchor. If the wind had been so strong that I could not get her head to the wind, I would have let go the anchor, and given her chain sufficient to have fetched her up, and if that was not suffi-

cient I would have kept the engine going to assist the chain. If the engine and anchor would not hold her, there was nothing more could be done but for her to go on the beach. I did not see her while she lay there. I was out in that storm in LakeErie. It was a very heavy gale of wind, with snow there. It closed the navigation to Grand River. It closed the river. Captain Jones and William Dickson showed me the place where she was stranded.

Question. What do you say of the practicability of unloading that vessel?

[Objected to by libellants, as incompetent and irrelevant.]

I should think it would be almost impossible to unload her there. She was full on deck and below, and to get the deck load off a bridge would have to be built three hundred and seventy-four feet long, which would have been attended with difficulty that season of the year. And I think the weather was so cold that I do not think it possible for a man to work in the hold, or in the water in the hold. I don't believe a man could live in the water in the hold. The cargo might have been got out by tongs, after tearing up the decks, without going into the water. The tonnage of that vessel by custom-house measurement is four hundred and fifty tons. She would carry about her tonnage. Whether it was good seamanship to enter the harbor would depend on the position the vessel was in.. If she was near in shore I would think it prudent to go in. I think if I had been aboard of her I would have gone in. I think under all circumstances, the weather as it was, I would have left the cargo on board. There was no place to put them, as I could see. I don't know that it would have been any advantage to take wet goods ashore. I have been in charge of a propeller several times, and I have been sailing-master of a government vessel on the lakes. Have known Mallon twelve years. He has always sustained a good character as a captain; a careful man and a good seaman. I sailed the year 1852 on the Niagara. She was a stout, good seaboat as there was on the lakes. Her large anchor, including stock, is about 1,700 pounds. The anchor is abundantly heavy for such a vessel.

Cross examined by Libellants.

I am not sailing at present. I came from Painesville, Ohio, to be a witness in this case. I reside there. I came at Mr. Cobb's request. I was requested a month ago to come.

Re-examined by Respondents.

I was present when the vessel was loaded for this trip. I went the round trip on her before, and staid with her till she was loaded, and then I left. I do not think she was too heavy loaded. I have known her heavier loaded. I had gone up to Chicago on her, on some business.

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(*Deposition of William A. Smith.*)

William A. Smith, called by respondents. Sworn in open Court.

I was second mate on the propeller last season. I was up all night. It was as bad a time as I ever saw on the lake, the night she was stranded. It blowed and snowed very hard. We went into Presque Isle and let go an anchor, and she dragged. There was no way to avoid dragging that I know of. I am acquainted with the harbor five or six years. It is a good harbor. I helped to stow the cargo. I lowered the goods down in the hold. William Dickson, the witness here, and William Mullen stowed it away. We put all the heavy stuff, such as crates, barrels of liquor, molasses, and rice on the ground tier. About two-thirds of the hold were covered with the heavy stuff on the ground tier, and the lighter stuff on top. It was late in the season, and more than usual care taken. There was a full deck load. No liquors on deck. There were sugars in barrels. The whole hold was filled clear up to the hatches; no room to go down; could not have measured down. The hatches we kept fastened to keep everything right and dry below. They were battened down in the usual way. The hold is entire, and about eighty feet long, and was stowed full. I am accustomed to stow goods, and I think there was no place at Presque Isle where they could be safer than in the vessel. The water in the fire hold was about four or five feet. It is about the depth as the other. The main hold was not opened. We could not pump her out. We started the pumps and pumped some time. It was reported that the sand came in, and we could not succeed lowering the water. The day before we left we pumped again, and I do not think we lowered the water of any account. The water may have lowered on the outside. We pumped near two hours.

Cross-examined by Libellants.

I am on the vessel now. There was more water in her aft than forward; she was down in the stern.

Re-examined by Respondents.

It is usual to stow cargo as it comes. This was stowed more carefully.

Re-cross-examined by Libellants.

The Milwaukee goods is usually stowed in midships and on top, so as to get at it easy, and to keep the Chicago goods fore and aft.

The respondents offered and read in evidence the protest referred to in the deposition of Hugh Mallon, which said protest is as follows:—

(*Protest.*)

By this public instrument of protest, be it known that on the eighth day of December, A. D. 1854, before me, Henry R. Mizner, a notary public in and for the County of Wayne and State of Michigan, personally came Hugh Mallon, master, Robert Jones, first mate, William A. Smith, second mate, of the vessel or propeller Niagara, of the burthen of 450 tons, or thereabouts, belonging to the port of Buffalo in the State of New York, who severally declared on their oaths that the said propeller Niagara left the said port of Buffalo on Wednesday, the 29th November last, at four o'clock in the afternoon, laden with merchandise bound for Milwaukee and Chicago; that they took the usual route and reached Lake Huron December 2d, at four o'clock in the morning, in perfect safety; weather favorable; crossed Saginaw Bay in the afternoon; snow-storm came on about eight o'clock in the evening with light wind, which freshened by twelve o'clock to a gale; made Thunder Bay light at one o'clock; snowing hard and blowing a gale from E. N. E.; made Presque Isle light at four o'clock morning December third; and shifted N. E. and by E., blowing a heavy gale; headed for the harbor; vessel rolling heavily; got into the harbor and let go anchor; dragged anchor and boat struck on the beach, stern first, but immediately swung round broadside; in about a half hour commenced making water fast; commenced pumping vigorously, but the water gained so fast that it was useless, and we abandoned the pumps. Being in a wilderness, it was deemed safest to leave the goods on board, under cover of the hatchways, which were not opened, and leaving three men in charge of the wreck. Propeller Plymouth soon left, and brought us to China, St. Clair County, where we took our route by land to Detroit (navigation having closed), and reached Detroit December eighth, in the morning.

And the said appearers did further severally declare that the said propeller Niagara, at the time of her said departure from the port of Buffalo, in the State of New York, on her intended voyage, was tight and staunch, and had her hatchways well and securely fastened, and was well and sufficiently manned, provided, and furnished with all things needful and necessary for the said voyage; that during said voyage the said appearers and rest of the crew used their utmost endeavors to preserve the said propeller, and the goods of her loading, from damage. And therefore the said Hugh Mallon, master, here at the first opportunity, and before the nearest notary, did declare to protest, as by these presents he doth solemnly protest against all and every person or persons whom it shall or may concern; and doth declare that all damages, losses, and detriments that have happened to the said propeller, and the goods of her loading, are, and ought to be borne by the merchants and freighters interested, or whomsoever else it may concern (by way of average or otherwise), the same having occurred as before mentioned, and not by or

through the insufficiency of the said propeller, or neglect of the said master, his officers, or any of his crew. All of which matters and things were declared, alleged and affirmed as before set forth in the presence of me, the said notary. And therefore I have hereunto subscribed my name, and affixed my notarial seal, being requested to testify and certify in the premises.

This done and protested at the city of Detroit, in the [L. S.] County of Wayne, in the State of Michigan, the day and year first above written.

HENRY R. MIZNER, *Notary Public*,
Wayne County, Michigan.

STATE OF MICHIGAN,
County of Wayne, ss.

Hugh Mallon, master, Robert Jones, first mate, and William A. Smith, second mate of the propeller Niagara, of Buffalo, in the State of New York, being severally sworn, do severally make oath and say, that the foregoing instrument of protest hath been clearly and distinctly read over to them, these deponents, and that they know the contents thereof, and that the several matters and things therein contained are right and true in all respects as the same are therein particularly alleged, declared, and set forth.

HUGH MALLON, *Master.*
ROBT. JONES, *First Mate.*
W. A. SMITH, *Second Mate.*

Sworn by all the deponents severally, and subscribed before me this eighth day of December, 1854.

HENRY R. MIZNER, *Notary Public*,
Wayne County, Michigan.

(*Agreement of Parties in open Court.*)

Saturday, November 26, 1855.

It is conceded that the correct amount of the goods sent to both auction-rooms is $\$9277\frac{19}{100}$; of these, $\$2488\frac{43}{100}$ went to Rooney's, and the balance of $\$6788\frac{76}{100}$ went to Wall's; in these amounts the ten per cent. has already been added.

It is proved that one bale of bags, amounting to $\$34\frac{56}{100}$, not delivered, which libellants claim.

(*Decree.*)

And afterwards, to wit, on the tenth day of October, A. D. 1855, the following proceedings were had, to wit:—

This day came the parties by their proctors, and this cause having been heard on the pleadings and proofs, and due consideration being had, it is ordered, adjudged and decreed, that the libellants recover

for the damages to their goods as propounded in their libel, and for which they have a lien upon the said Propeller Niagara. And it is further ordered that the Court will hereafter proceed to ascertain the amount of said damages, and that either party may adduce additional evidence in respect to the same.

(*Libel amended.*)

And afterwards, to wit, on the third day of December, A. D. 1855, the following proceedings were had, to wit:—

This day came the libellants, by their proctors, and moved the Court for leave to amend their libel in this respect, to wit, by adding to the third article of said libel and after the words "and greatly damaged," the following words: "and one bale of bags of the value of thirty-seven dollars and forty cents become wholly lost to the libellants." On consideration whereof, it is ordered by the Court that such leave be, and is hereby granted.

(*Final Decree.*)

And now, on the twenty-first day of the said term of November, to wit, on the fourth day of December, A. D. 1855, the following proceedings were had, to wit:—

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES, vs. THE PROPELLER NIAGARA, and ANSEL R. COBB *et als.*, Lbts. & Respts. } In Admiralty.

This day came the parties by their advocates, and the Court on due consideration of the evidence submitted have ordered, adjudged and decreed, and this Court doth now here order, adjudge and decree, that the said libellants have sustained damages in manner and form as they have propounded in the libel herein filed, and that the same is a lien upon said propeller Niagara to the amount of four thousand nine hundred and sixty-four dollars and fifty cents.

And the Court doth further order, adjudge and decree, that the said libellants do have and recover the said sum of four thousand nine hundred and sixty-four dollars and fifty cents, with four hundred and forty-seven dollars and seventy-six cents, their costs about their said suit in this behalf by them expended, of and from John J. Tallmadge, the claimant herein, and Joseph W. Haskins, William Sanderson, and George D. Dousman, his sureties and stipulators; and further, that the same be paid in ten days, and in default thereof an execution be issued against them for the same. And now the above named respondents, after a final decree entered in this cause, came and show to the Court that the matters in dispute exceeds the sum of two thousand dollars, and thereupon claim and appeal from the said final decree to the Supreme Court of the United States, and

respectfully pray that the said decree of the said Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and the same is accordingly allowed.

A. G. MILLER.

And afterwards, to wit, on the eighth day of December, A. D. 1855, came the said repondents and filed their appeal bond as follows:—

THE PROPELLER NIAGARA, her Tackle, Apparel, &c., ANSEL R. COBB, CORNELIUS H. CANFIELD, WILLIAM H. ABELL, JOHN ALLEN, Jr., HUGH ALLEN, and FRANKLIN LEE, Claimants and Appellants,

vs.

LESTER SEXTON, LORIN SEXTON, GEORGE SEXTON, and EDWARD BOLLES, Libellants and Appellees.

Know all men by these presents, that we, John J. Tallmadge, Joseph W. Haskins, George G. Dousman, and George D. Dousman, Daniel Newhall, and Horatio Hill, of the city of Milwaukee and State of Wisconsin, are held and firmly bound unto the above named Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, in the sum of twelve thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the fifth day of December, A. D. 1855.

Whereas, the above named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the District Court of the United States for the District of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. J. TALLMADGE, [SEAL.]
J. W. HASKINS, [SEAL.]
GEO. G. DOUSMAN, [SEAL.]
GEO. D. DOUSMAN, [SEAL.]
DANL. NEWHALL, [SEAL.]
HORATIO HILL. [SEAL.]

The name "William Sanderson" struck out, and "Geo. G. Dousman" in the 15th line from the top of the other page, inserted before execution.

Sealed and delivered, taken and acknowledged this 8th day of December, 1855, before me,

B. K. MILLER,
Clerk & Com'r.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

J. J. Tallmadge, J. W. Haskins, George G. Dousman, George D. Dousman, Daniel Newhall, and Horatio Hill, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

Sworn to this 8th day of December, A. D. 1855, before me,
B. K. MILLER,
Clerk & Com'r.

December 8th, A. D. 1855. This bond and sureties approved.
A. G. MILLER,
Judge.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, Clerk of the District Court of the United States of America for the District of Wisconsin, do hereby certify the foregoing, contained on two hundred and seventeen pages as numbered, to be a true copy as of record of the libel, answer, exhibits, proofs, and proceedings in the case of Lester Sexton, Lorin Sexton, George Sexton, and Edward Bolles, libellants, against the propeller Niagara, her engine, machinery, boats, tackle, apparel, and furniture, Ansel R. Cobb, Cornelius H. Canfield, William H. Abell, John Allen, Junior, Hugh Allen, and Franklin Lee, respondents.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said Court, at Milwaukee, this 29th day of April, in the year of our Lord one thousand eight hundred and fifty-six, and of our Independence the eightieth.

[SEAL.] B. K. MILLER,
Clerk.

Filed 7th July, 1856.

Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden before the Hon. John McLean, judge of said circuit, and one of the Justices of the Supreme Court of the United States, and the Hon. Elisha M. Huntington, judge of said district of Indiana, on the 19th day of May, in the year of our Lord one thousand eight hundred and fifty-six.

ALEXANDER O. SHEPHERD, James Davidson, Samuel Peters, George Willard, Elijah F. Gillan, Samuel McClure, and William F. Davidson,
vs.
THE COVINGTON DRAW-BRIGE COMPANY.
} Chancery.

Be it remembered, that heretofore, to wit, on the 5th day of May, in the year of our Lord one thousand eight hundred and fifty-six, the following bill of complaint was filed in the office of the clerk of said court, to wit:

UNITED STATES,
District of Indiana, ss:

To the judges of the circuit court of the United States for the district of Indiana:

Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, and George Willard, and William F. Davidson, of Ohio, and all citizens of the State of Ohio, bring this their bill against the Covington Draw-Bridge Company, of Covington, a corporation and citizen of the State of Indiana, and Richard M. Nebbekir, also a citizen of the State of Indiana; and thereupon your orators complain and say that your orators, Shepherd, Davidson, Gillan, McClure, Peters, and Willard, heretofore, to wit, on the 15th day of December, eighteen hundred and fifty-four, in the November term of said year, your said orators, in this circuit court of the United States for the district of Indiana, by the consideration and judgment of this said court, recovered against the said defendant, the Covington Draw-Rridge Company, six thousand eighty-four $\frac{93}{100}$ dollars damages, and six hundred and ninety-four dollars and ten cents costs, which your said orators had sustained, by reason of the damages which your said orators had sustained from the defendant, as for their costs and charges in and about that behalf expended, which were adjudged to your said ora-

tors in and by the said court, as by the record and proceedings thereof, now on file in the office of the clerk of the said court at Indianapolis, reference being thereto had, and to which, for greater and more certainty, your said orators pray leave to refer, doth and may more fully appear.

And your said orator, William F. Davidson, says, that heretofore, to wit, on the 15th day of December, eighteen hundred and fifty-four, in the November term of said year, your said orator, by the judgment and consideration of the circuit court of the United States for the district of Indiana, recovered in said court against the said defendant, the Covington Draw-Bridge Company, one thousand and eighty dollars damages, and four hundred and fifty-eight dollars twenty cents, his costs and charges in that behalf expended, which were adjudged to your said orator in and by the said court, as by the record and proceedings, now on file in the office of the clerk of said court at Indianapolis, will at large upon reference being thereto had, and to which your said orator for greater certainty, begs leave to refer, more fully appears.

And your orators further say that said judgments, so recovered by them as aforesaid, were duly docketed by the clerk of the said court, as by reference to the record thereof in the office of the clerk of this court will fully appear; and your orators further shew, that on the 25th day of January, eighteen hundred and fifty-five, the said judgment remaining unpaid and unsatisfied, your orators did, for the purpose of obtaining satisfaction of said judgment to which they were severally and respectively entitled, and had recovered as aforesaid, they severally sued out of the clerk's office of this court writs of execution, called writs of fieri facias, directed to the marshal of the district of Indiana, in which the said defendant, the Covington Draw-Bridge Company, is situate and was incorporated, by which writs the said marshal (the one in behalf of your orators, Shepherd, Davidson, Gillan, McClure, Peters, and Willard,) was commanded that of the goods and chattels, lands and tenements of the said Covington Draw-Bridge Company to be found in his district, he cause to be made the sum of six thousand and eighty-four dollars and ninety-three cents, which your said orators in the said circuit court recovered against the said defendant on the 15th day of December, eighteen hundred and fifty-four, for their damages adjudged to them in the said court; as also the sum of six hundred and ninety-four dollars and ten cents, their costs and charges in that behalf expended, whereof the said Covington Draw-Company was convicted, as appears of record.

And your orator, William F. Davidson, shows unto your honors that the said writ of fieri facias, issued as aforesaid, upon the judgment in his favor, commanded the said marshal, that of the goods and chattels, lands and tenements of the Covington Draw-Bridge Company to be found in his district, he cause to be made the sum of one thousand and eighty dollars, which your orator, said William F.

Davidson, recovered in our circuit court, on the 15th day of December, eighteen hundred and fifty-four, against the said Covington Draw-Bridge Company, for his damages, which, in the said court, was adjudged to him on the day and year aforesaid, and also the sum of four hundred and fifty-eight dollars and twenty cents, his costs and charges in that behalf expended, whereof the said defendant was convicted, as to the said clerk appeared of record.

And the said marshal was, in and by said writs of fieri facias, required to have the money mentioned in the said writs before said circuit court at Indianapolis, on the third Monday in May next, together with said writs; and your orators further shew that said writs of fieri facias were delivered to the said marshal on the day they bear date, and the said marshal afterwards made due and diligent search for property of the said defendant, whereof he could satisfy said executions, or some part thereof; but failing to find any property out of which the said executions could be satisfied, he did, on the day of March, eighteen hundred and fifty-five, return said executions into the office of the clerk of said court, endorsed "no goods or chattels, lands or tenements of the defendant found in my bailiwick and district, whereon to levy," as by the said writs of fieri facias, with their returns endorsed thereon, now on file in office of said clerk, more fully appears, and to which your orators pray leave to refer; and your orators further say that the said judgments so by them respectively recovered are still due and unpaid, and are wholly unreversed, and the amount of damages mentioned and specified in said judgments ought to be paid to your orators respectively, and that the said defendant has no offset or claim against said judgments, or either of them.

And your orators further shew that they are informed and believe that the defendant, the Covington Draw-Bridge Company, claims to be incorporated by and under an act entitled "An act to incorporate the Covington Draw-Bridge Company," enacted by the general assembly of the State of Indiana, approved January 15th, eighteen hundred and fifty, by which act John Adamson, Richard M. Nebbekir, defendant before named, and George Nebbekir, and such other person as they might associate with them, were thereby constituted a body politic and corporate, by the name of the "Covington Draw-Bridge Company," and by such name they, in and by said act, made capable of suing and being sued, pleading and being impleaded, answer and being answered unto, in law and equity, in all courts whatever.

And by the second section of said act, said corporotion was empowered to erect a bridge across the Wabash river at any point opposite the town of Covington, or its additions; and it was further provided that the capital stock of said company should not exceed thirty thousand dollars; and among other things in said act provided, it was in and by the same provided and declared that, when the said bridge should be completed, the said corporation might

erect at either end a gate, and demand and receive the following rates of tolls: for two horses or oxen and waggon, 25 cts.; for a three-horse team and waggon, 30 cts.; for a four-horse or ox-team and waggon, 35 cts.; for each additional horse or ox attached thereto, five cents; for a single horse and waggon or buggy, 20 cts.; for a horse and rider, ten cents; for a person on foot, five cents; for a horse led or driven, five cents; for cattle, three cents per head; for hogs, two cents; for sheep, one cent, and in similar proportions to the foregoing rates for any other animals or carriages.

And your orators further shew that said corporation has erected said bridge at said town of Covington, in the county of Fountain, in the district aforesaid, and that the said company, in the enjoyment of their said franchise conferred upon them by their said charter, are and have been in the receipt of large sums of money derived from tolls, received by them from the public crossing the said bridge, which sums the said company have on hand, as your orator, charge and believe, and they ought to apply the same in payment of your orators' judgment; but the said company unjustly refuse to pay the same, and put your orators at defiance, and the individual corporators of said company boast that the said judgment shall never be paid, and said company is in the daily receipt of large sums of money derived from the tolls of said bridge.

Your orators state the said corporation has no money or property available which can be reached by any common law process, and applied to the payment and satisfaction of your orators' said judgments; and without the aid of this court, exercising its chancery powers, they are without remedy.

They say that the said corporation has recured sufficient ground upon either shore of the Wabash river for the erection of their abutments of said bridge thereon; but your orators are advised and believe that the said company have only an irrevocable license from the proprietors of the soil on which said abutments are placed to maintain them there, and that they have no saleable or valuable interest therein, except in connection with the right of taking tolls for crossing said bridge; and that the said bridge itself is wholly valueless except with the right of taking tolls for the crossing thereon, and inasmuch as the purchaser of said bridge at marshal's sale would not require the right to exercise the franchise of taking tolls, said bridge would be worthless to such purchaser and a nuisance in his hands, as he would not have in law the benefit to the charter to protect him in maintaining said bridge across said Wabash river, the same being a public highway, nor could he take tolls for crossing the same; said corporation has no other means of paying said judgment except from the money now on hand, and which said company unjustly refused to apply to the payment of said judgment, and from the money to be derived from the tolls to be received from the pnblic for crossing said bridge hereafter. And your orators further state that said company will

not willingly apply said money, but wholly refused to pay or make any arrangements to pay said judgment; and your orators further state that they are advised and believe that the above-named defendant, Richard M. Nebbekir, is the principal manager, stockholder, and toll gatherer, and financial agent, of said corporation; and as it appears from the said charter, that said company was not required to have any officers, or to keep any books or records, and as your orators are advised, that the above-named Richard M. Nebbekir has full knowledge of all the affairs of said corporation, they make him a defendant hereto, and ask him to answer this bill upon oath. To the end, therefore, that the said defendants may if they can show why your orator should not have the relief hereby prayed, and said Nebbekir, upon his corporal oaths, upon and according to the best of his knowledge, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories numbered and set forth as by the note hereunder written he is required to answer, that is to say:

1st. What has been the income derived by the Covington Draw-Bridge Company from tolls received by said company, from persons and the public generally, for crossing said bridge?

2d. State the amount that has been so received each quarter year, distinguishing so as to give the amount received each year and quarter year?

3d. State particularly and carefully where that money is, so far as you may know, whether the same has been divided among the stockholders and corporators; if so, state when and to whom, and the amount to each corporation and the time of the dividend?

4th. State the amount on hand the 6th day of March, eighteen hundred and fifty-five; and also the amount that said corporation may have on hand or on deposit, giving the name of the person holding the deposit, and giving a particular and detailed account of the disposition of all funds of the said corporation since the first of June, eighteen hundred and fifty-four, giving an account of the income derived from tolls, and the disposition of the same, to whom paid or divided, and when; and if the same, or any part thereof, remain undisposed of, state where said funds are?

5th. State the names of the persons interested as stockholders in said corporation, their respective interest and place of residence?

6th. Are you well acquainted with the affairs of said company? are you not (a) principal stockholder in said company—its toll gatherer, financial agent, and manager?

State fully.

Your orators pray your honors, the premises considered, to grant unto them a writ of injunction, to be issued according to the rules and practice of this court, enjoining the said corporation from disposing of any of the effects or moneys of said company, and restaining said company from committing any waste or injury to said

bridge; and your orators also pray your honors to appoint a receiver, some meet and suitable person, to take charge and control of said bridge, and all the property and effects of said corporation, and to take and receive the tolls and incomes of said bridge, and apply the same, after defraying the expenses of said receiver, to the payment of the said judgments of your orators, and the costs and expenses of this and their suits; and they also pray for such other and further relief as the nature of their case may require, and as shall be agreeable to equity and good conscience.

Your orators pray that the usual writ of subpœna may issue, directed to the said defendants, the Covington Draw-Bridge Company and Richard M. Nebbekir, commanding them, by a certain day and under a certain penalty therein to be specified, to be and appear before your honors in this honorable court, and to answer all and singular the premises, and further to stand to and abide by and perform such orders, directions, and decree, in the premises as shall be made therein; and your orators will pray, &c.

J. P. USHER,
Solicitor and Counsel for Complainant.

The defendant, Nebbekir, is required to answer the interrogatories numbered respectively in this bill, 1, 2, 3, 4, 5, 6.

J. P. USHER,
Sol. for Compt.

On the back of which bill was endorsed the following notice: "The clerk will please file and issue the usual process."

And thereupon the proper writ of subpœna was issued from the clerk's office and delivered to the marshal, and by him returned, with due notice of service marked thereon.

And afterwards, at the June rules of said court, to wit, on the 1st Monday of June, eighteen hundred and fifty-five, at the clerk's office of said court—

The parties, by their solicitors, now come, and the respondents, the Covington Draw-Bridge Company, now file their answer in these words:

And the said Covington Draw-Bridge Company, for separate answer to the above bill of complaint, saving to themselves all manner of benefit of the many untruths and imperfections in the said bill contained, says that the statements in said bill contained are wholly untrue in substance and matters of fact; and these respondents require strict proof of each and every allegation in the bill by which their interest is in any wise to be effected. And these respondents aver, in answer to said bill, that there are no such judgments, and executions, and returns as are set forth in the bill remaining in said court of record; that if any such judgments are remaining of record, they were obtained by fraud, mistake, and surprise, and are not obligatory on these respondents; that these respondents have no equi-

table interest in said bridge and abutments, and the right to take tolls, as charged in the bill; but these respondents have a legal interest in the bridge, derived under their charter, which is subject to execution at law. These respondents deny that any execution at law was ever legally issued and returned in these premises; and having fully answered, these respondents, the Covington Draw-Bridge Company pray to be dismissed with their costs.

The above answer of the above corporation was taken under the common seal of said corporation, as by the said seal affixed appears.

R. M. NEBBEKIR.

And the respondent, Richard M. Nebbekir, now files his demurrer to the bill of the complainant, in these words and figures, to wit:

And the said Richard M. Nebbekir, one of said respondents, protesting, and now comes and demurs to said bill and to said interrogatories, severally, and says that the same are not sufficient in law, either as to discovery, relief or to require from him, said defendant, answers to said interrogatories, or either of them; wherefore this defendant does demur to said bill, and to said interrogatories, and to each of them, and prays to be dismissed with his costs.

RICHARD M. NEBBEKIR.

I, Oliver H. Smith, counsel for the above Richard M. Nebbekir, do hereby certify that in my opinion the above demurrer is well founded in point of law.

O. H. SMITH.

Richard M. Nebbekir, the above defendant, upon his oath, says that the above demurrer is not interposed for delay.

RICHARD M. NEBBEKIR.

Subscribed and sworn to in open court, May 10th, 1855.

H. BASSETT,
Clerk.

And the complainants are ruled to set down the demurrer for argument and to reply to the answer the present rule day or the next rule day, on the first Monday in July next; or the bill will be dismissed, unless a judge of the court shall allow further time for the purpose.

And at the same rules came the complainant, to wit, the 4th day of June, eighteen hundred and fifty-four.

Comes now the complainant, by John P. Usher, their solicitor, and files their joinder to the demurer of the said Richard M. Nebbekir, in these words and figures, to wit:

Comes now the complainants, and for answer to the demurrer of the

said Richard M. Nebbekir, defendant herein, they say that their said bill is sufficient in law to be answered unto, and that the said Nebbekir, as one of the members of said company, is bound to answer unto the same, and the plaintiffs join in the demurrer.

JOHN P. USHER,
Counsel and Solicitor for Complainants.

And sets the same down for hearing at the present term of the court; and said complainant, by their said counsel, also file their replication to the answer, in these words, to wit:

Comes now the complainants and say that the matters and things in their bill alleged, are true, and that the defendants', the said Covington Draw-Bridge Company's, answer is untrue, as the said plaintiffs are ready to aver and prove, as this honorable court shall direct.

J. P. USHER,
Counsel and Solicitor for Complainants of the said Covington Draw-Bridge Company.

And afterwards, at the May term, eighteen hundred and fifty-five, (June 5th, being the 13th judicial day of said term,) present the Hon. Elisha M. Huntington, the parties, by their solicitors, now come, and the court overrule the demurrer of the said Richard M. Nebbekir, and he is ruled to answer the bill, whereupon the said respondent, Nebbekir, files his answer, which is in these words, to wit:

And the said Richard M. Nebbekir, one of the said respondents, for separate answer to so much of said bill and interrogatories as he is advised it is material for him to make answer unto, he answers; and, as to said first interrogatory, says that the gross receipts of said company, from tolls from said bridge, from the time of its completion up to the time of filing the bill, was about $11,373, according to the best of his information and belief.

And as to the second interrogatory he answers and says, that the receipts for the quarter ending with November, 1852, from the tolls from the bridge, were about $1,258; of the quarter ending with February, 1853, were about $620; of the quarter ending with May, 1853, were about $822; of the quarter ending with February, 1854, were about $863; of the quarter ending with August, 1853, were about $1,178; of the quarter ending with November, 1853, about $1,690; of the quarter ending with May, 1854, $954; of the quarter ending with August, 1854, $1,208; of the quarter ending November, 1854, $1,817 00; of the quarter ending with February, 1855, $749, to the best of his knowledge, information, and belief.

As to the said third interrogatory he answers and says, according to the best of his knowledge, information, and belief, a very large part of the receipts from tolls of the bridge were expended in

paying debts of the company incurred in building the bridge, the amount of which he cannot state. Another considerable portion of the receipts from tolls necessarily paid out for attendance on the bridge and collecting the tolls, and for repairs, the amount of which he cannot state. Another considerable portion of the receipts has been necessarily expended in defending the several actions at law that have been, as he believes, unjustly prosecuted against the company by the complainants and others, claiming damages for injuries to steamboats passing the bridge and draw. These several expenditures, the precise amount of which he has no means of ascertaining, absorbed the amount received for tolls, except what has passed into the hands of the stockholders, being inconsiderable in amount, and the precise amount of which he has no means of ascertaining, as there has been no regular dividends made. In answer to said 4th interrogatory, he says that he is unable to state what amount the company had on hand on the 6th of March, 1855, but it was small, and has since been expended in paying expenses of maintaining the bridge and defending actions against the company and paying costs.

In answer to the fifth interrogatory, he states that Richard M. Nebbekir, John Adamson, and Joseph Foster, are the sole stockholders of said company, each owning one-third of the stock.

In answer to the 6th interrogatory, he states that he is tolerably well acquainted with the affairs of said company, but he does not consider himself the financial agent of the company. The three stockholders all stand upon an equality, and consult together on important financial and business operations—is a stockholder to the extent before stated, and is toll-garherer of the company.

This respondent having fully answered said interrogatories, in answer to said bill of complaint, says that he is informed and believes that no such judgments at law in favor of Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, and James Willard, as described in the bill, was rendered against said company as therein stated; and of that allegation in the bill he requires strict proof.

And this respondent further answering, says, that at the date said pretended judgment, and executions, and returns, the said Covington Draw-Bridge Company were the owners of said draw-bridge, and the same, as he is informed and believes, was at said times and still is, with the rents and profits thereof, subject to execution at law.

This respondent admits said act of incorporation with said provisions in the charter, as stated in the bill; and that said bridge was erected in pursuance of the terms and powers conferred by the charter.

This respondent, further answering, says, that if any such judgments at law, in favor of said complainants, as are described in the bill, have been rendered by said court against said draw-bridge

company, the same were obtained, as he is informed and verily believes, by fraud, false swearing, combination, and surprise, against said company, and without any just cause ro consideration whatever.

This respondent says that said corporation has not secured the ground upon which the abutment is erected on the west shore of the river Wabash, nor have they any legal or equitable interest in the road on the west side of the river that leads the travel to the bridge, but the same is the property of others than said bridge company, as he is informed and believe; this respondent further says that said bridge company, as such corporation, do not own, either by legal or equitable title, and he is informed and believes, either the ground upon the east side of the river upon which the abutment of the bridge stands, or the road that leads the public travel to the bridge on that side of the river.

This respondent denies that said bridge is valueless, except as connected with the right of taking tolls for crossing.

This respondent states that said bridge is erected across the Wabash river with a draw, and that great care and constant attention are required in the season of the year when steamboats can run, to raise the draw to pass the boats, and lower it for the travel across the bridge; and that there is great and constant danger during said time of heavy damages being incurred by the company, without proper care promptly exercised at the draw, as the steamboats approach, for injuries to steamers passing the draw in navivating the river.

This respondent says that he is advised and believes that the franchise of said corporation cannot be sold or exercised by third persons under the charter, without the consent of the corporation.

This respondent further says that if this honorable court, upon the final hearing of the case, shall appoint a receiver to take charge of the bridge, and collect the tolls, he prays the court to require said complainants to give good and satisfactory security for proceeds of the tolls; also, to keep the bridge in repair, and also, for all damages that may accrue to the bridge, and to the company, from any neglect of such receiver to keep the bridge in repair, or to promptly raise and lower the draw in due time when required; and that said complainants and such receiver be held liable for all such damages while the bridge shall be under their charge.

And this respondent says that he has no interest in said bridge or the property of said company, except as he has herein stated to the best of his knowledge, information, and belief; and having fully answered, he prays to be dismissed with his costs.

R. M. NEBBEKIR.

Personally come into open court, on this 5th day of June, 1855, Richard M. Nebbekir, and being duly sworn upon his oath, says

that the above answer, so far as he states from his own knowledge, is true, and so far as he states from information, he believes it to be true.

H. BASSETT,
Clerk.

To which the complainants file their replication, in these words, to wit:

Comes now the complainants, and say that the matters and things in their bill alleged are true, and that the defendants, the said Covington Draw-Bridge Company's, answer is untrue, as the said plaintiffs are ready to aver and prove as this Hon. court shall direct.

J. P. USHER,
Counsel and Sol'r for Compl'ts.

And thereupon, the complainants now move the court to appoint a receiver in the premises, in pursuance of the prayer of the bill, and thereupon file the following affidavits, to wit:

STATE OF INDIANA, *ss:*

John P. Usher, attorney and counsel for the above-named plaintiff in the suits at law prosecuted by them against the above-named Covington Draw-Bridge Company, and solicitor for the above-named complainants, being duly sworn, doth say and swear that the said complainants did respectively, as in the bill of complaint alleged, recover judgment against said Covington Draw-Bridge Company, as in their said is charged.

That the said judgments are wholly unsatisfied and unpaid, and in nowise reversed. That executions were sued out upon said judgments in favor of William F. Davidson in due form of law, as in said bill is stated, and that the same was returned as in said bill is stated, all of which will appear by reference to the records of this court. Deponent further says that at the time of the suing out of said executions, and while the same were in the hands of the said marshal for executing, he, the deponent, is informed and believes that the said marshal, or his proper deputy, called upon the defendant, Nebbekir, for property to satisfy said executions, and was finally informed or notified by said Nebbekir, the said draw-bridge company had no property to turn out upon the executions; and that no property would be turned out by said defendant, the draw-bridge company, or money paid thereon. Deponent further says that he has made enquiries of various persons residing in the vicinity of the said company, and their said bridge, and cannot ascertain that the said company has any property other than said bridge; and he is also informed and believes that the said company do not own the soil or land on which their abutments and piers are placed and their

bridge constructed, and that they have only an easement over the same. Deponent is further advised and believes that the said company has no property subject to execution, unless it be the superstructure of said bridge; and that the same should be valueless, as deponent believes; otherwise the right to take tolls, which right, deponent is advised, cannot be sold. Deponent further says that he believes that, if a receiver is appointed to take and appropriate said tolls to the payment of said judgment, that the same may be paid; otherwise not. Deponent further says that the said Nebbekir and the other corporators acting through said Nebbekir, as deponent believes, refuse to pay said judgments, or any part thereof, unless the complainants will consent and agree to abate a large amount thereof. Deponent further says that the said Nebbekir, acting for said company, well knows that said judgments exist, and that they are unpaid, and that the answer of the defendant, said company, in relation thereto, is wholly untrue. Deponent further says that he verily believes that the defence interposed by said company is interposed for delay, and that no member of said company, or other responsible person, will venture to affirm on oath the truth of said defence.

That the only means the plaintiffs have of making their said debt is out of the tolls to be received at said bridge.

That the bridge is perishable in its nature, exposed to both fire and flood. And deponent further says that he verily believes that there is great danger of the plaintiffs losing the benefit of their said judgments. He believes that it is the design and purpose of the members of said corporation to deprive the plaintiffs of the benefit of their respective judgments by every means in their power, and that they have no purpose or intention of applying any of the tolls or revenues to the payment of said judgments.

Deponent further says, that at the time of the rendition of the verdict upon which said judgments were afterwards taken, he was informed by one of the counsel of the defendant, Mr. S. C. Wilson, that if judgments upon the verdict was not pressed at that term of the court, that he would advise the defendants to make some effort about paying the same by the next term of the court, if the motion for a new trial should be overruled; and in the hope that the same would be done, it was on the part of the plaintiffs consented that the motions for new trials should be continued.

Deponent further says, that he is well satisfied that the said judgments can never be collected by execution against said company, and that the only means of obtaining satisfaction of the same is by and throught the aid of a receiver.

J. P. USHER.

Subscribed and sworn to in open court, this 5th day of June, 1855.

H. BASSETT, *Clerk.*

To which the respondents, by their solicitors, appear and object to the same, and day thereof is given the parties until the next term of this court, and the complainants have leave to take out execution on the judgment at law.

And afterwards, to wit, at a circuit court begun, continued, and holden at the same place, and before the same judge as aforesaid, on the 4th day of December, 1855, that being the 12th judicial day of the November term of said court, for the year 1855—

The parties come and the complainants now file their supplemental bill in these words, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
District of Indiana.

WILLIAM F. DAVIDSON et al.
vs.
THE COVING. DRAW BRIDGE COMPANY et al. } In chancery.

To the hon. the judge of the said court:

The above-named complainants, by way of petition and supplement to the bill of complaint herein, represents to your honors, that since the last term of this court they have sued out of the clerk's office of this district executions on the judgments mentioned in said bill, directed to the marshal of this district to be executed; that the marshal has, in obedience to the command of said executions, levied the same upon the bridge of the defendants, that being the only tangible property of the defendants; and for the purpose of subjecting the same to sale, has caused the said bridge and the rents and profits thereof to be appraised, treating the same as real estate; and after having duly advertised the same for sale, did offer the same for sale upon the execution of said complainants; Davidson then and there bid off the rents and profits of said bridge for one year at said sale at and for the sum of $4,666 66⅔—that being two-thirds of the appraised value of the same for one year.

That said sum bid more than satisfied said execution aforesaid Davidson; and by an arrangement with the other execution, plaintiffs and complainants herein, it was understood and agreed that the excess should be credited on the execution in their favor, but that the same has not been done for the reason hereinafter mentioned.

That the complainants have been in doubt whether said sale was valid, or whether the same could be made valid—the marshal having seized said bridge and treated the same as real estate, and caused the rents and profits thereof to be appraised, in which appraisement was included the value of the yearly franchise of the defendant, and was in fact the only rent, income, or value, to be appraised, and which was appraised; your complainants have been in

doubt and uncertainty as to whether they would acquire any title or right to take and receive the tolls of the bridge if they proceeded to perfect s'd sail, and might by so doing involve themselves in a serious difficulty, by entering the execution satisfied and getting nothing valuable or tangible therefor.

They further state and show, that the said bridge was appraised at $70,000, in which appraisement was embraced the value of the franchise of said company, of at least $45,000—the said bridge never having cost more than $25,000 in the construction thereof.

That said executions and the appraisement and return are referred to in aid of this petition and supplemental bill, and copies of which are hereto attached; and the complainants further say that the defendants have, since last term of this court, been in the perception (reception) of large rents and profits derived from the tolls of said bridge, and which said corporations have and might and should apply to the payment of complainants' judgments.

That said defendants have refused to surrender to plaintiffs the possession of the bridge under the said sale.

And your complainants further say, that as it is a matter of great doubt and uncertainty whether the said bridge shall be regarded as real or personal property, and whether the rents and profits can be sold as has been attempted by the marshal, and whether the same will be availing if sold, and the attempted sale perfected, that in consideration of the premises, your complainants pray that the court will be pleased to grant them a receiver as before prayed, or to make such order in reference to said executions as will secure to the complainants the payments of their said judgments, and for such other order as will be just, &c.

HANNEGAN, VORRIS, & USHER,
For Plaintiffs.

To which the respondents file their demurrer in these words:

And the said respondents come, and as to the said supplemental bill of said complainants say that the said supplemental bill contains no matter of equity, and therefore they do demur in law to the same, and pray the judgment of the court whether they are bound by the laws of the lands to make further answer thereto.

O. H. SMITH,
Sol'r for respondents.

Richard M. Nebbekir, one of the above respondents, upon his oath, says that the above demurrer is not interposed for delay, but for the furtherance of justice.

R. M. NEBBEKIR.

Sworn and subscribed to in open court this 4th day of December, 1855.

H. BASSETT, *Clerk.*

I, Oliver H. Smith, solicitor for defendants in the above cause, do hereby certify that, in my opinion, the demurrer is well founded in point of law.

O. H. SMITH.

And thereupon the complainants move the court to appoint a receiver to take possession of said draw-bridge, and receive the tolls, which motion is objected to by said respondents; whereupon said motion is submitted to the court upon bill, supplemental bill, answer to the original bill, and additional answers, which are in these words and figures, to wit:

And the said Covington Draw-bridge Company, by leave of the court, for further answer to said bill of complaint, say, that since the last term of this court, the said judgments at law of said complainants, described in the bill, with the interests and costs, have been and are fully satisfied by executions levied upon the property of these respondents of much greater value than the amount of said judgment, interest and costs, which levies are still in full force, in nowise set aside or rendered void, in manner and form as is specially stated and set forth in the answer of Richard M. Nebbekir, their co-defendant, filed herewith, which answer of said Nebbekir these defendants make a part of this answer, and claim the benefit thereof as much so, to all intents and purposes, as if the same was incorporated herein. And these respondents, having fully satisfied said judgments at law, pray to be dismissed with their costs.

The above answer of the corporation was taken under their common seal of said corporation, as by the said seal affixed appears.

R. M. NEBBEKIR, [SEAL.]

And further additional answer, in these words, to wit:

And the said Richard M. Nebbekir, one of said respondents, by leave of the court first had and obtained, for further answer to said bill of complaint, he answers and says, according to the best of his information and belief, as he is informed and believes, that since the last term of this court the said judgments at law described in said bill of complaint have been satisfied by proceedings at law upon the same, in manner following, as he states and charges the truth to be, that is to say, on the 11th day of June, in the year 1855, the said Willard F. Davidson, one of said complainants, prosecuted out of this court, on the common law side thereof, a certain writ of execution, commonly called a fieri facias, upon said judgment described in said bill against said Covington Draw-bridge Company, under the seal of the court, and duly attested and directed to the marshal of the district of Indiana, by which he was commanded that of the goods and chattels, lands and tenements, of said Covington Draw-bridge Company, said marshal cause to be made the sum of one thousand and eighty dollars, the amount of

said judgment, with the sum of ($458) and 20 cents costs, and that he should have those moneys before the court on the third Monday of May, 1855, with said writ, and which writ of execution, on the day of the date thereof, came to the hands of said marshal to be executed, and was duly levied and executed by said marshal; and on the return day thereof, was duly returned by said marshal, with the following return thereon endorsed:

"By virtue of this execution, and in pursuance of plaintiff's attorneys' direction, I levied this execution upon the bridge of the Covington Draw-bridge Company, the right of way, fixtures, and appurtenances thereunto belonging; and after having advertised the same, according to law and the rules of this court, and after having had the same duly appraised, I did, on the 5th day of September, A. D. 1855, at the court-house door in the town of Covington, Fountain county, Indiana, between the hours of 10 o'clock a. m. and 4 p. m., offer for sale, at public auction, the rents and profits of said bridge aforesaid, for the term of one year, to William F. Davidson, for the price and sum of forty-six hundred and sixty-six dollars and sixty-six and two-thirds cents, said purchase being then and there the highest and best bid then and there made for the same; and the said bid so made by the said William F. Davidson amounts to two-thirds of the appraisements of the rents and profits of said bridge for one year; said appraisement I return herewith, all which remains wholly unpaid.

"JOHN L. ROBINSON,
Marshal.

"By GEO. McOUST,
Deputy.

"NOVEMBER 19*th*, 1855."

And which said return still remains in full force in this court, on the common law side of the same.

And this respondent further answering, says that on said 11th day of June, in the year 1855, the said Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, and George Willard, the other complainants in said bill, prosecuted out of this court, on the common law side thereof, their certain writ of execution, upon their said judgment described in said bill, commonly called a fieri facias, sealed with the seal of the court, and duly attested by the clerk thereof, directed to the marshal of the State, district of Indiana, commanding him that of the goods and chattels, lands and tenements of said Covington Draw-Bridge Company, he should cause to be made the sum of six thousand and eighty-four dollars and ninety-three cents, (6,084 93,) the amount of said judgment, and also the sum of $845 70 costs, and that he have those moneys before the court on the third Monday in November, 1855, to render to the plaintiffs, and which writ of execution, on the said 11th day of June, 1855, at said district, came to the

hands of said marshal to be executed, and was duly levied and executed by said marshal, and on the return thereof was duly returned by said marshal, with the following return thereon endorsed: "By virtue of this execution, and in pursuance of plaintiff's atty's directions, I levied this execution, June 11th, 1855, upon the bridge of the Covington Draw-Bridge Company, the right of way, fixtures, and appurtenances thereto belonging; and after having advertised the same, according to law and the rules of this court, and after having the same duly appraised, and before offering the property, to wit, on the 5th day of September, A. D. 1855, at Covington, the plaintiffs, by their agent, J. M. Merrill, directed me to return this execution without offering defendants' property for sale." See order endorsed hereon, November 19, 1855.

JOHN L. ROBINSON,
Marshal.

By GEO. McCREAT,
Deputy.

Endorsed: "The marshal will return this execution without offering defendants' property for sale." Covington, Sept. 5, 1855.

J. M. MERRILL, *Agent.*

Which return is in force.

And this respondent further says, the said appraisement of said property of the Covington Draw-Bridge Company, returned by said marshal, as referred to in said return, was and is in the words and figures following, that is to say: We, the undersigned, citizens and freeholders of Troy township, Fountain county, Indiana, summoned by the United States marshal to appraise the following-described property levied upon by said marshal, by virtue of two executions issued by the U. S. clerk of the U. S. circuit court for the district of Indiana, one in favor of Alexander O. Shepherd et al., and one in favor of William F. Davidson vs. the Covington Draw-Bridge Company, each bearing date June 11th, 1855, and both judgments rendered same day, viz, December 15th, A. D. 1854, do appraise the same as follows, to wit: the rents and profits for the term of seven years of the bridge of the Covington Draw-Bridge Company; the right of way, fixtures, and appurtenances thereto, we appraise at seven thousand dollars per year for said term of seven years, and the fee-simple of said above-described property we appraise at seventy thousand dollars.

GEORGE RIDGE, A. GISH, W. PRESCOTT,
Appraisers.

"We, the undersigned, selected according to law to appraise the property mentioned in the schedule on the other side of this sheet, upon oath, say that the several items, to the best of our judgment,

are worth the respective sums thereof at this time, exclusive of liens, mortgages, and other incumbrances.

GEORGE RIDGE, A. GISH, W. PRESCOTT,
Appraisers."

Subscribed and sworn to before me, this 5th day of September, 1855.

JOHN L. ROBINSON,
Marshal.
By GEO. McCREAT,
Deputy.

All of which will more fully appear by reference to said several executions, returns, and appraisement, all of which this respondent refers, and all of which this respondent makes a part of this his additional answer. Wherefore, inasmuch as said judgments of said complaints are satisfied at law, with ample powers in the court at law to enforce its own executions and other process in the premises, this respondent prays to be dismissed with his costs.

R. M. NEBBEKIR.

Personally came into open court, this 4th day of December, 1855, Richard M. Nebbekir, the above respondent, and after being duly sworn upon his oath, says that the foregoing answer, so far as he states from his own knowledge is true, and so far as he states from the information of others, he believes it to be true.

R. M. NEBBEKIR.

Sworn and subscribed to in open court, this 4th day of December, 1855.

H. BASSETT, *Clerk.*

Without oral argument, with leave to the parties to furnish the court with written briefs; and the court give the parties further day to hear the decision thereon.

And this cause was continued from day to day until the 25th day of the said November term, 1855. "And the court not being sufficientlyadvised in the premises, continue this cause under advisement until the next term of this court."

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis, in said district, on the 29th day of May, in the year of our Lord 1856, that being the 10th judicial day of the May term of said court, before the Hon. John McLean, one of the justices of the Supreme Bench of the United States, and judge of said circuit, and the Hon. Elisha M. Huntington, judge of said district—

The complainants, by Hannegan & Usher, their solicitors, now come, and the respondents, by O. H. Smith, their solicitor, come

also; and thereupon, this suit is set down for hearing upon the bill, supplemental bill, answers, replications, exhibits, and affidavits, judgments, executions, appraisements, and marshal's returns, as follows:

The affidavits of William F. Davidson, by his attorney, Dan'l W. Vorhees, in the following words, to wit:

STATE OF INDIANA, *ss:*

Daniel W. Vorhees being first duly sworn, says that on or about the 18th day of September last, as he now remembers, as the agent of the above-named plaintiff, he called upon the defendant, Richard M. Nebbekir, who was then in the possession and control of and at the above-named Covington Draw-Bridge, and for the said plaintiff demanded the possession of the said bridge from said Nebbekir for said Davidson, in pursuance of his purchase of the same on an execution issued upon the judgment in favor of said Davidson, and against said company, and mentioned and described in the bill in this cause. That he was answered by said Nebbekir, that, if Davidson ever obtained possession of said bridge, he must do it in a legal way; affiant repeated his demand, and said Nebbekir repeated his answer as above; affiant told said Nebbekir that his answer would be considered as a refusal to give possession, to which Nebbekir replied that he had no further answer to make, and that affiant was at liberty to consider his answer as he chose. Affiant further states that his business at said bridge was for the purpose of making said demand for the possession; and after parting from said Nebbekir, being fearful that he might not distinctly have understood him, he again returned, and distinctly and particularly informed said Nebbekir the object of his visit, and was answered in substance the same as before.

Affiant further states that he is a resident of Covington, Indiana, and that he has observed the travel and crossing upon said bridge, and verily believes that the travel greatly increased thereon, and that the tolls and revenues of the same have been more for the last quarter than any other corresponding quarter, and further saith not.

DANIEL W. VORHEES.

Sworn and subscribed to before me, this 3d December, A. D. 1855.

H. BASSETT, *Clerk.*

And also the following judgment obtained by William F. Davidson against the Covington Draw-Bridge Company, on the 25th day of May, in the year 1854, at a circuit court, begun and holden at Indianapolis, as aforesaid: Present, the Hon. Elisha M. Huntington, judge as aforesaid.

Which judgment is in the words and figures following, to wit:

"William F. Davidson, a citizen of the State of Ohio, complains of the Covington Draw-Bridge Company, citizens of the State of Indiana, defendant, in a plea of trespass on the case." Plea, not guilty. The foregoing is the only averment of citizenship in the declaration or plea.

Now come the parties by counsel, and the issue being joined between the parties, come a jury to try the same, to wit: B. F. Burlingham, G. G. Barton, Nathan Rowley, James T. Walker, Christian Bippus, Conrad Muth, John Morris, F. R. Dickerson, Jesse D. Carmichael, George A. Clarke, Jared Clarke, Joel E. Hendricks, twelve good and lawful men of the district of Indiana, who being empanelled, tried, and sworn, well and truly to try the issue joined between the parties, and a true verdict give according to the evidence, after hearing the evidence and argument of counsel, and receiving the charge of the court, and after due deliberation, bring into court the following verdict, to wit: "We the jury find for the plaintiff, and assess his damages at one thousand and eighty dollars."

And thereupon, the defendants move the court to set aside the verdict, and grant a new trial on the following grounds, to wit:

1st. The verdict was contrary to the evidence.

2d. The verdict was contrary to law.

3d. The jury mistook the law as charged by the court.

4th. The court refused to give the several charges requested by the defendant to the jury.

And the court not being sufficiently advised in the premises give the parties further day, until the next term of this court, to hear their decision thereon.

And at the November term of said court, holden before the Hon. Elisha M. Huntington, judge of said court, for the year 1854, come now the parties, by their attorneys; and the court being sufficiently advised of the motion made for a new trial at the last term of this court, overruled said motion.

It is therefore considered by the court, that the plaintiff do recover against the said defendant the said sum of one thousand and eighty dollars in damages, as by the aforesaid jury assessed, and also his costs and charges herein laid out and expended, taxed at dollars and cents.

And afterwards, to wit, on the 25th of January, 1855, execution was issued by the clerk of said court, delivered to the marshal of said district of Indiana, who returned the same into the office of said clerk, on the fifth day of March, 1855, with the following endorsement: "This writ returned wholly unsatisfied; no goods or chattels, lands or tenements, found in my district, whereon to levy, of the defendants."

JOHN L. ROBINSON,
Marshal.

And afterwards, to wit, on the 11th day of June, 1855, an alias execution was issued by the clerk of said court, on the aforesaid judgments, and duly delivered to the marshal of said district of Indiana, who on the 19th day of November, 1855, returned the same into the office of the clerk aforesaid, with the following endorsement thereon, to wit:

By virtue of this execution, and in pursuance of plaintiff's attorneys' direction, I levied this execution upon the bridge of the Covington Draw-Bridge Company, the right of way, fixtures, and appurtenances thereto belonging; and after having advertised the same, according to law and the rules of this court, and after having had the same duly appraised, I did on the 5th day of September, A. D. 1855, at the court-house door, in the town of Covington, Fountain county, Indiana, between the hours of 10 o'clock a. m. and 4 o'clock p. m., offer for sale at public auction the rents and profits for seven years, by the year, of said bridge of the Covington Draw-Bridge Company, and then and there sold said rents and profits of said bridge aforesaid, for the term of one year, to William F. Davidson, for the price and sum of forty-six hundred and sixty-six dollars and sixty-six and two-third cents, said purchaser being then and there the highest bidder, and that the highest and best bid then and there made for the same; and the said bid, so made by William F. Davidson, amounts to two-thirds of the appraisement of the rents and profits of said bridge for one year; said appraisements I return herewith, all of which bid remains wholly unpaid, November 19th, 1855, and that the defendants have no other property in my district.

JOHN L. ROBINSON,
Marshal.

By GEO. McCREAT,
Deputy.

And also the following judgment in favor of the said Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, and George Willard, against the Covington Draw Bridge Company, rendered by the aforesaid circuit court, on the 22d day of May, 1854: Present, the Hon. Elisha M. Huntington, judge of said court, in these words and figures, to wit:

"Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, and George Willard, citizens of the State of Ohio, plaintiffs, complain of Covington-Draw-Bridge Company, citizens of the State of Indiana, in a plea of treaspass on the case." Plea, not guilty. The foregoing is the only averment of citizenship in the declaration or plea.

Come now we the parties, by counsel; and issue being joined between the grantees, come now a jury to try the same, to wit, Benjamin P. Douglass, W. P. Woodyard, Lot Day, jr., John Sinclair, G. Brecount, David Thatcher, S. S. Mickle, Thomas A. McFar-

land, Hiram McMurray, S. G. Upton, James M. Sleeth, and A. O. Vanorman, twelve good and lawful men of the district of Indiana, who being empannelled, tried, and sworn, well and truly to try the issue joined between the parties, and a true verdict according to the evidence, who after hearing the evidence and argument of counsel, and receiving the charge of the court, and after due deliberation, returned into court the following verdict, to wit: We, the jury, find the defendants guilty, and assess the plaintiff's damages to the sum of six thousand eighty-four dollars and ninety-three cents, ($6,084 93.)

And thereupon the defendants move the court to set aside the verdict, and grant a new trial on the following grounds, to wit:

1st. The verdict is contrary to the evidence.

2d. The verdict is contrary to law.

3d. The jury mistook the law as charged by the court.

4th. The court refused to give the several charges requested by the defendants to the jury.

And the court, not being sufficiently advised in the premises, give the parties further day until the next term of this court.

At the November term of said court, for 1854, holden at Indianapolis as aforesaid: Present the Hon. Elisha M. Huntington, judge as aforesaid—

Now come the parties, by their attorneys; and the court, being sufficiently advised of the motion for a new trial herein made at the last term of this court, overrule said motion.

It is therefore considered by the court, that the plaintiff do recover against the defendant the said sum of six thousand and eighty-four dollars and ninety-three cents in damages, as by the jury assessed, and also his costs and charges herein expended, taxed at dollars and cents.

And afterwards, to wit, on the 25th day of January, 1855, execution issued on the judgment last aforesaid, from the office of the clerk of said court, and duly delivered to the marshal of said district of Indiana, who, on the 5th day of March, 1855, returned the same into the aforesaid clerk's office aforesaid, with the following endorsement thereon, to wit:

"This writ returned wholly unsatisfied; no goods or chattels, lands or tenements, found in my bailiwick or district, whereon to levy, of the defendants."

JOHN L. ROBINSON,
Marshal."

With the following attached to said execution.

"The bridge is there; you can levy upon it or not, as you think proper; it is not my business to give up property.

R. M. NEBBEKIR,

February 27th, 1855.

And afterwards, to wit, on the 11th day of June, 1855, an alias execution was issued by the clerk aforesaid, on the last-mentioned judgment aforesaid, and duly delivered to the marshal of said district of Indiana, who, on the 19th of November, 1855, returned the same into the office of the clerk aforesaid, with the following endorsement thereon, to wit:

By virtue of this execution, and in pursuance of plaintiff's attorneys' direction, I levied this execution, June 11, 1855, upon the bridge of the Covington Draw-Bridge Company, the right of way, fixtures, and appurtenances thereto belonging; and after having advertised the same, according to law and the rules of this court, and after having had the same duly appraised, and before offering the property, to wit, on the 5th day of September, 1855, at Covington, the pl'tff's, by their agent, J. M. Merrill, directed me to return this execution without offering defendants' property for sale—see order endorsed hereon—and that the defendants have no other property in my district.

November 19th, 1855.

JOHN L. ROBINSON, *Marshal.*
By GEO. McONCT, *Deputy.*

"The marshal will return this execution without offering defendants' property for sale. Covington, September 5, 1855.

A. O. SHEPHERD.
By J. M. MERRILL."

"This execution is entitled to a credit of , being the overplus of William F. Davidson's bid on the draw-bridge, rents, and profits, and by him settled with us, sold Sept. 5th, 1855, on an execution in favor of said Davidson vs. Covington Draw-Bridge Company, judgment in U. S. cir. ct. district Indiana. A. O. Shepherd and others.

"Indianapolis, September 6, 1855.

By J. M. MERRILL."

The following is the appraisement as referred to in the marshal's return as aforesaid:

We, the undersigned, freeholders and citizens of Troy township, Fountain county, Indiana, summoned by the United States marshal, to appraise the following, described property, levied upon by said marshal, by virtue of two executions issued by the U. S. clerk of the U. S. circuit court for the district of Indiana—

"One in favor of Alexander O. Shepherd et al., and one in favor of William F. Davidson vs. the Covington Draw-Bridge Company, each bearing date June 11th, 1855, and both judgments rendered same day, viz, December 15th, A. D. 1854," do appraise the same as follows, to wit:

The rents and profits, for the term of seven years, of the bridge of the Covington Draw-Bridge Company; the right of way, fixtures,

and appurtenances thereto, we appraise at seven thousand dollars per year, for said term of seven years, and the fee-simple of said above-described property we appraise at the price of seventy thousand dollars.

GEORGE RIDGE, A. GISH, & W. PRESCOTT,
Appraisers.

We, the undersigned, selected according to law to appraise the property mentioned in the schedule on the other side of this sheet, upon oath, say that the several items, to the best of our judgment, are worth the respective sums specified therein, and that the same is the fair cash value thereof at this time, (exclusive of mortgages, liens, or other incumbrances.)

GEORGE RIDGE, A. GISH, W. PRESCOTT,
Appraisers.

Subscribed and sworn to before me, this 5th day of September, A. D. 1855.

JOHN L. ROBINSON, *Marshal.*
By GEO. McONCT, *Deputy.*

The respondents object to the reading of said judgments, on the ground that the same are illegal, void, and fully discharged, but the court overruled the objections, and the record of the judgments are read as evidence in the suit; and after argument, the court, not being sufficiently advised, give the parties further day to hear their decision thereon, the motion for a receiver being under advisement as heretofore.

And afterwards, to wit, on the 3d day of June, 1856, that being the 14th judicial day of said term, before the same judge as aforesaid—

Come now again the parties, by their said counsel; and the court, still having under advisement the motion heretofore made for the appointment of a receiver of the tolls and profits of the bridge of the said Covington Draw-Bridge Company, according to the prayer in complainants' bill, now pronounce the judgment and decree of the court, that thea llegations in complainants' bill are true, and that the prayer therein contained ought to be granted, and that said complainants have no other adequate remedy.

It is therefore ordered, adjudged, and decreed, that John McManaway be, and he is hereby, appointed a receiver of the tolls and revenues of the said Covington Draw-Bridge Company; that he enter upon and by himself, his agents and servants, possess himself of and control the said bridge absolutely and free from all let and hindrance of the said Covington Draw-Bridge Company, their agents, and servants, and other persons whatsoever. And it is further ordered, adjudged, and decreed, that during the time the said John McManaway shall be the receiver of the said tolls and revenues of

said bridge, the said company shall in nowise molest or disturb the said receiver in the possession thereof, or in the reception of the tolls and profits thereof, and that said receiver may and shall receive the same tolls provided for in section three of the act of the general assembly of the State of Indiana, approved January 15th, 1850, incorporating said company. Said receiver shall keep a daily account of his receipts and expenditures, which shall be open to the inspection of the parties. It is further ordered, adjudged, and decreed, that it shall be the duty of the said receiver, by himself and other qualified person or persons, during that time, that the Wabash river may be navigable for steamboats, to raise or otherwise remove the draw in said bridge when boats are approaching, by night or day; and it shall be the further duty of said receiver to cause lights to be placed on each side of the draw of said draw-bridge, when the said river is so navigable; and it shall be the further duty of the said receiver to keep the said bridge in suitable and necessary repairs, the expenses of which shall be paid and borne by the said receiver out of the tolls and incomes of said bridge, as well as his own fees and charges for the discharge of his said duty as receiver. And it is further ordered, adjudged, and decreed, that the said receiver shall, from time to time, at least as often as every three months, pay whatever sum of money there may then have accumulated in his hands of the tolls and incomes of said bridge, over and above the expenses as aforesaid, to the complainants herein, in a pro rata proportion upon their respective judgments in the complaint mentioned; and further, that the said receiver do, at each succeeding term of this court, report thereto his entire actings and doings in and about his said receivership, provided, that before said receiver shall enter upon his said duties, and take possession of said bridge, he shall take an oath well and faithfully to perform his said duties, to be endorsed on his bond next mentioned, and that he shall, with one or more freehold securities, to be approved by H. C. Newcomb, master in chancery, within thirty days, enter into a penal bond in the sum of ten thousand dollars, payable to the State Indiana, conditioned for the faithful performance of his duties and trusts imposed upon him by this order, which bond upon breach thereof shall be for the benefit of either party interested. And thereupon, the defendants pray an appeal to the Supreme Court of the United States from the above decree of this court in this behalf, which motion the court sustain, and grant the appeal accordingly; whereupon the said appellants now file their writ of error, in these words:

The President of the United States of America, to the judges of the circuit conrt of the United States for the seventh circuit and district of Indiana, greeting:

Because in the record and proceedings, and also in the rendition of the judgment and decree in the said seventh circuit and district of Indiana, wherein Alexander O. Shepherd, James Davidson,

Elijah F. Gillan, Samuel McClure, Samuel Peters, George Willard, and William F. Davidson, are plaintiffs, and the Covington Draw-Bridge Company and Richard M. Nebbekir are defendants, a manifest error hath happened to the great damage of the said Covington Draw-Bridge Company and the said Richard M. Nebbekir, as by their complaint appears, and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what in right and according to law and custom of the United States should be done.

Witness, Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 3d day of June, A. D. 1856, and of the independence of the United States the 79.

In testimony whereof, I, Horace Bassett, clerk of said circuit court, have hereunto set my hand and affixed the seal of [SEAL.] said court, at Indianapolis, the day and year last aforesaid.

H. BASSETT,
Clerk.

And also file their bond and security, which is approved by the court, in these words:

Know all men by these presents, that we, Richard M. Nebbekir, John Adamson, and Joseph Foster, are held and firmly bound unto Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, George Willard, and William F. Davidson, in the penal sum of ten thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Signed and sealed, and dated this 3d day of June, A. D. 1856.

The condition of the above obligation is such, that whereas the Covington Draw-Bridge Company and the said Richard M. Nebbekir have prosecuted a writ of error to the Supreme Court of the United States from the judgment and decree of the circuit court of the United States for the district of Indiana, in the suit in chancery therein, wherein the said Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, George Willard, and William F. Davidson, were complainants, and the said Covington Draw-Bridge Company and Richard M. Nebbekir were defendants: Now, should the said Covington Draw-Bridge Company and

Richard M. Nebbekir well and truly prosecute said writ of error to final effect, and pay and satisfy all damages and costs that may be adjudged in said Supreme Court against them, and also pay and satisfy to the said defendants in error the full amount of the net receipts of said draw-bridge company from said bridge, during the pendency of said writ of error, not exceeding the amount of the judgments, interest, and costs of the said defendants in error, specified in said bill of complaint, and also the costs in said suit in chancery—

Should the decree be affirmed in the Supreme Court of the United States, then the above obligation to be void; else to be and remain in force.

R. M. NEBBEKIR [SEAL.]
JOHN ADAMSON, [SEAL.]
JOSEPH FOSTER, [SEAL.]

And also filed their citation, with the acknowledgment of the service of the same, by the counsel of the appellees, in these words:

To Alexander O. Shepherd, James Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, George Willard, and William F. Davidson:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, 1856, next, pursuant to a writ of error filed in the clerk's office of the circuit and district of Indiana, wherein the Covington Draw-bridge Company and Richard M. Nebbekir are plaintiffs and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice not be done to the parties in that behalf.

Witness Hon. Elisha M. Huntington, district judge of the United States for the district of Indiana, this 3d day of June, A. D. 1856.

E. M. HUNTINGTON.

I hereby accept the service of the above citation to the above case in the Supreme Court of the United States. June 3d, 1856.

J. P. USHER,
Attorney for Defts. and Appellants.

Thereupon, the appeal being perfected, the same is ordered to operate as a supersedeas in this court in said case. It is further ordered, that when said bond of said receiver shall be filed, within the thirty days the same shall be made a part of the record, nunce pro tunc, as of this day, and shall be deemed and taken as having been filed before the prayer of said appeal.

And afterwards, to wit, on the 9th day of July, 1856, the com-

plainants filed in the office of the clerk of said court the bond of the receiver, in the following words, to wit:

Know all men by these presents that we, John McManaway, Edward A. Hannegan, J. P. Usher, are held and firmly bound unto the State of Indiana in the sum of ten thousand dollars, to be paid to said State; the payment whereof, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this the 21st day of June, A. D. 1856.

The condition of the above obligation is such, that whereas the above bounden John McManaway has been, by the circuit court of the United States for the district of Indiana, appointed receiver of the tolls and revenues of the Covington draw-bridge, in a certain suit pending in said court, wherein Alexander O. Shepherd and others are complainants and the Covington Draw-bridge Company et al. are defendants:

Now, if the said John McManaway, receiver as aforesaid, will and shall well and faithfully perform all the duties and trusts reposed in him as such receiver, and shall keep and observe all the rules and orders of said court appointing him and the order of his appointment, then this bond shall be void; else, in full force.

JOHN McMANAWAY, [SEAL.]
E. A. HANNEGAN, [SEAL.]
J. P. USHER, [SEAL.]

Approved by me this 24th day of June, 1856.

E. E. WILCOX,
Clerk of Fountain County, Indiana.

STATE OF INDIANA,
Fountain county.

John McManaway, the receiver within named, being duly sworn, doth depose and swear that he will well and faithfully discharge the duties and trusts reposed in him as such receiver, according to the orders of the writ and the best of his ability.

JOHN McMANAWAY.

In witness whereof I [have] hereunto subscribed and affixed my notation seal, at Covington, this 24th day of June, A. D. 1856. [SEAL.]

SELMAN K. HANNEGAN, *N. T.*

J. P. Usher, within named, says that the real estate by him owned is of the value of more than ten thousand dollars over and above all incumbrances. [SEAL.]

J. P. USHER.

Subscribed and sworn to before me, mayor of the city of Terre Haute, June 30, 1856.

Witness my hand and official seal.

C. Y. PATTERSON, *Mayor.*

Taken and approved by me, this second day of July, 1856.

H. C. NEWCOMB,
Master in Chancery.

UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Horace Bassett, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the foregoing fifty-two pages contain a full and perfect transcript of the record and proceedings and decree in the above-entitled cause, as the same remain of record in said court.

Witness my hand and the seal of the court at Indianapolis, this 21 [SEAL.] day of July, A. D. 1856.

H. BASSETT,
Clerk.

Costs of transcript, twenty-one dollars and ninety cents. Paid by the appellants, by O. H. Smith, their counsel.

July 21, 1856.

H. BASSETT, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

THE COVINGTON DRAW-BRIDGE COMPANY AND RICHARD M. NEBEKER, appellants.
vs.
ALEXANDER O. SHEPHERD, JAMES Davidson, Elijah F. Gillan, Samuel McClure, Samuel Peters, George Willard, and William F. Davidson, appellees.

And now, to wit, on the first judicial day of the term of the Supreme Court of the United States, holden at Washington city, on the first Monday of December, in the year one thousand eight hundred and fifty-six, before the honorable judges thereof, come the said appellants and say, that in the within record and proceedings manifest error hath intervened in this, to wit:

The decree of the circuit court was rendered in favor of the appellees, whereas by the law of the land, the decree of the circuit court should have been in favor of the appellant, dismissing the bill